



Prevailing Wage *News*



NEW YORK CITY COMPTROLLER
JOHN C. LIU

MAY 2013
Municipal Building, One Centre Street
New York, NY 10007

COMPTROLLER LIU LAUNCHES WEBSITE ENABLING CHEATED WORKERS TO SEARCH FOR MONEY THEY ARE OWED

Approximately \$2 Million Remains Unclaimed From Prevailing Wage Settlements; Search at www.comptroller.nyc.gov/KnowYourRights

Comptroller Liu has launched a website that will enable workers who were paid less than the prevailing wage on City public works projects to search online for the money they are owed. The Comptroller's office routinely collects funds from settlements with offending contractors. Currently, approximately \$2 million remains unclaimed.

The new website features a confidential search tool accessible to the public. Investigations by the Comptroller's Bureau of Labor Law indicated that some workers didn't file claims with the Comptroller's office because of the misapprehension that doing so would subject them to immigration enforcement. According to New York State law, workers employed on public works projects are entitled to prevailing wages regardless of immigration status.

Labor law data shows that immigrant Latino workers are some of the most exploited in terms of substandard wages and a lack of occupational safety. A great many of the underpaid workers for whom money has been collected have been Latinos.

Past practices to locate workers consisted of publishing names in newspapers in hopes that the workers would see their names and contact the Comptroller's office. The website

simplifies the claims process, allowing workers to conveniently search an online, user-friendly database.

Since January 2010, the Comptroller's office has collected over \$15 million in underpayments with interest for workers and civil penalties for the City of New York, a record high for the Comptroller's Office. Over 700 workers have failed to claim their unpaid wages - over 500 of whom have last known addresses in the five boroughs. Most payouts are for more than \$1,000, with the upper range at \$59,000. Prevailing wage settlements that are not claimed by workers within six years revert to the City's treasury.

Prevailing wage violations involving kickback schemes are the most difficult to uncover and prove, and they have become more common as unscrupulous employers search for new ways to evade labor law enforcement.

NYPD/FDNY PAINTING CONTRACTOR DEBARRED FOR KICKBACK SCHEME

In July 2012, after an intensive investigation by the Bureau of Labor Law and a six day trial at the NYC Office of Administrative Trials and Hearings, the Comptroller determined that Abbey Painting Corp. underpaid six Latino immigrant workers by almost \$140,000 on several public works projects by using a kickback scheme. Abbey Painting had several City contracts for painting at various police precincts, fire stations, and administrative offices and paid its workers only \$100 to \$130 per day in cash, instead of the prevailing rate of wage and benefits of over \$50.00 per hour. The owner of Abbey Painting, Shahzad Alam, issued weekly checks in the name of his employees in face amounts equaling prevailing wage rates. However, instead of giving his employees the paychecks, Alam made them endorse the back of the checks without seeing the face, took back the checks and later cashed them himself, to make it look like the employees cashed the checks. Alam then paid them in cash, telling them that if they did not like his payment method, they could find new jobs.

The Bureau of Labor Law's investigation included video evidence and subpoenaed bank records. The NYC Office of Administrative Trials and Hearing agreed with the Bureau of Labor Law that Abbey Painting's payment method constituted an illegal kickback scheme. The Comptroller's determination on Abbey Painting was the first to interpret the prohibition

continued on page 3

INSIDE...

There is a lot to report since our last newsletter!!!

▶ Bureau of Labor Law Enforcement Highlights

▶ Mayor Bloomberg's Actions Against Prevailing Wage

▶ Comptroller Liu's Initiatives Involving Public Works

PLUMBING CONTRACTOR PLEADS GUILTY TO CRIMINAL CHARGES AND ACCEPTS DEBARMENT

In August 2012, the Bureau of Labor Law, working in partnership with the NYC Health and Hospitals Corporation, the NYC Department of Housing Preservation and Development, the NYC School Construction Authority and the Manhattan District Attorney's Office, entered into an agreement on behalf of twenty underpaid workers who performed plumbing work for DeWaters Plumbing and Heating, LLC on twenty one public works projects throughout the City of New York. DeWaters Plumbing and Heating cheated these workers out of \$818,898.07 in wages and benefits. DeWaters Plumbing and Heating plead guilty to one count of petit larceny, an A misdemeanor in violation of New York State Penal Law § 155.25. As part of the plea agreement, DeWaters Plumbing and Heating acknowledged that it willfully violated prevailing wage law and falsified payroll records. DeWaters Plumbing and Heating and its owners Jerry DeWaters and Peter Lustig also agreed to be barred from bidding on public projects in New York for the next five years.

SCA/DOE CONTRACTOR PAYS \$700,000 AND ACCEPTS A WILLFUL VIOLATION

In March 2013, the Bureau of Labor Law entered into a \$700,000.00 settlement with Homeric Contracting Co. Inc. on behalf of workers who were cheated out of wages and benefits for work on City public works projects. Of that amount, \$63,636.66 is payment to the City's general fund as a civil penalty. Homeric Contracting had dozens of contracts with the Department of Education and School Construction Authority for painting, replacing and repairing floors, windows and doors, and installing air ventilation systems at public schools throughout New York City. Seven workers filed claims against Homeric Contracting when they were not paid prevailing wages on these projects. As part of the settlement, Homeric Contracting acknowledged that it willfully failed to pay prevailing wages. Thus, if Homeric Contracting receives a second willful violation within the next six years, it will be barred from bidding on public projects in New York for five years.

DOE/HHC ELECTRICAL CONTRACTOR DEBARRED FOR FALSIFYING CERTIFIED PAYROLL REPORTS

The Bureau of Labor Law recently entered into five settlements on behalf of electricians that were employed by Thunder Brothers Corp. for a total violation, including underpayment to 14 employees with interest and civil penalty, of \$321,036.28. Over the course of two years, Thunder Brothers performed electrical work at New York City public schools and public hospitals. Thunder Brothers largely employed Polish immigrant workers and underpaid them by as much as \$77.40 per hour. Thunder Brothers attempted to conceal its violations of prevailing wage law from the Department of Education and the Health and Hospitals Corporation by submitting fraudulent certified payroll records, which reported false rates of pay for some workers and omitted other workers entirely. The case, which was referred by the Labor Law compliance unit of the NYC Department of Education, involved payment from the four prime contractors that hired Thunder Brothers and provided for the debarment of Thunder Brothers and its owner, Andrzej Wrobel, for five years.

Other Recent Bureau of Labor Law Enforcement Highlights:

- The Bureau of Labor Law reached a \$50,000 settlement with **Empire Air Conditioning & Heating Corp.**, notwithstanding that the contractor was out of business and its owner had been declared personally bankrupt. The settlement was funded by Empire's bonding company, and concerned one worker who performed HVAC work at public hospitals. As part of the settlement, Empire Air Conditioning & Heating and its owner, Roy Antonoff were debarred for five years.
- **S&N Builders Inc.** agreed to pay \$330,550.01 to six Latino immigrant workers who performed renovations, painting and maintenance at the St. Agnes branch of the New York Public Library pursuant to a contract with the Department of Design and Construction. As part of the settlement, S&N Builders acknowledged that it willfully violated prevailing wage law and agreed to pay a \$31,263.26 civil penalty to the City of New York.
- **Fibrenetics, Inc.** agreed to pay \$168,956.79 to ten workers who repaired tanks and piping at Water Pollution Control Plants pursuant to six contracts with the Department of Environmental Protection. Fibrenetics paid \$16,895.68 to the City of New York as a civil penalty for its violation of prevailing wage law.
- **Schlesinger Building Restoration, Inc.** and prime contractor Eastco Building Services, Inc. settled with the Bureau of Labor Law on behalf of eighteen workers who were employed by Schlesinger Building Restoration and performed exterior restoration work at a building operated by the Department of Homeless Services. Schlesinger Building Restoration and Eastco Building Services agreed to pay \$290,909.10 to the workers and \$29,090.90 to the City of New York as a civil penalty. As part of the settlement, Schlesinger Building Restoration acknowledged that they willfully violated prevailing wage law.
- **TEKsystems, Inc.** agreed to pay \$222,055.93 to thirteen workers who installed telephone and internet wiring at Jacobi Medical Center. TEKsystems paid \$22,205.59 to the City of New York as a civil penalty for its violation of prevailing wage law.
- The Bureau of Labor Law settled with Triton Structural Concrete, Inc. for \$145,729 on behalf of forty two workers who were underpaid by its subcontractors **Elite Demolition Contracting Corporation** and **Prestige Builder & Management**. The workers reconstructed the Coney Island Boardwalk and Marcus Garvey Park pursuant to a contract with the Department of Parks and Recreation.
- **Scott Electrical Service, LLC** agreed to pay \$40,790.51 to four electricians who worked in New York City public schools. As part of the settlement, Scott Electrical Service acknowledged that they willfully violated prevailing wage law and paid \$4,079.05 as a civil penalty to the City of New York.
- **PMJ Electrical Corp.** agreed to pay \$36,704.56 to four electricians who worked in New York City public schools. As part of the settlement, PMJ Electrical acknowledged that they willfully violated prevailing wage law and paid \$3,670.46 as a civil penalty to the City of New York.
- **A&S Electric, Inc.** agreed to pay three electricians \$8,107.10 for work performed at various public schools pursuant to three contracts with the Department of Education. A&S Electric paid \$2,026.78 as a civil penalty to the City of New York. A&S Electric also acknowledged that it willfully violated prevailing wage law by paying an "apprentice" rate to a worker who had never been registered in an apprentice program approved by the New York State Department of Labor.
- The Bureau of Labor Law settled with Liro Program and Construction Management on behalf of thirty-four workers employed by subcontractor **High Tower Construction Group, Inc.**, who were misclassified and paid an "apprentice" rate without being in a registered apprentice program. Liro agreed to pay \$45,585.51 to workers who performed masonry work at various Emergency Medical Services facilities. High Tower acknowledged that they willfully violated prevailing wage law and paid a civil penalty of \$10,000.00.



MAYOR BLOOMBERG'S ACTIONS AGAINST PREVAILING WAGE

City Council Lawsuit

Last year, the Mayor vetoed new prevailing wage and living wage laws passed by the City Council. After the Council overrode the Mayor's vetoes, he sued the Council in State and Federal court to overturn the new laws.

The Mayor claims that the new prevailing wage and living wage laws passed by the City Council are pre-empted by State and Federal laws. The City Council, Service Employees International Union Local 32BJ and the Retail Workers & Department Store Union have asked both courts to dismiss the cases on the basis that the Mayor does not have legal standing to challenge the laws on behalf of the State and Federal governments. The parties are awaiting the decision of the courts.

The new prevailing wage law – NYC Administrative Code Section 6-130 – extends existing prevailing wage protection for building service employees to certain businesses receiving at least \$1 million in financial assistance from the City and certain landlords that lease space to City agencies. This bill was supported by SEIU Local 32BJ.

The new living wage law – NYC Admin Code Section 6-134 – extends living wage protection (Wage = \$10/hour, Benefit = \$1.50/hour) with annual cost-of-living increases to certain businesses that receive at least \$1 million in financial assistance from the City and their tenants or sub-tenants. This bill was supported by RWDSU.

Comptroller Liu has honored his obligations under the two new laws by incorporating Admin Code 6-130 into the Labor Law 230 Prevailing Wage Schedule for building services and publishing a new Living Wage Schedule for Admin. Code 6-134.

Part 38 Personnel Order

Last year, the Mayor also issued an executive order attempting to eliminate prevailing wage protection for all City employees, who were classified in what is known as Part 38 of the Civil Service. A coalition of civil service employee unions, including District Council 37, Plumbers Local 1, District Council of Carpenters, Electricians Local 3, Steamfitters Local 638, Operating Engineers Local 15 and Local 30, Painters District Council 9, SEIU Local 246, Ironworkers Local 40, and Teamsters Local 237 took the Mayor to court and succeeding in getting his order overturned, on the basis that it was arbitrary and capricious and would have deprived City employees of sub-

DID YOU KNOW?



Since Comptroller Liu took office in January 2010, the Comptroller's Bureau of Labor Law has collected over \$15 million in underpayments with interest for workers and civil penalties for the City of New York, a record high for the Comptroller's Office. Over \$14.2 million of that money has gone to workers and over \$860,000 has gone to the City treasury. In that time the Bureau of Labor Law also debarred 16 contractors for prevailing wage violations and issued warnings for willful violations to 14 contractors.

In the wake of Tropical Storm Sandy, there has been a need for remediation and restoration work by contractors on an emergency basis to address the damage caused by the storm. There is no exception from the prevailing wage requirement in Labor Law §§ 220 and 230 for emergency work. Work that is normally covered by prevailing wage laws is still covered when the work is procured on an emergency basis. This includes New York City public works and building service contracts which are funded or reimbursed by the Federal Emergency Management Agency.

stantial rights without the due process protections of notice and a hearing.

The Court did not accept the Mayor's claim that Comptroller Liu and his predecessors set inflated wage rates for City employees and stated: "The [Comptroller's] Consent Orders were valid based on hearings, investigations and negotiations between the Comptroller and representative unions, that evaluated prevailing wages in both the private and public sector."

The Mayor is appealing that Order and the oral argument on that appeal is currently scheduled for May 7, 2013 at 2:00 p.m. at the courthouse of the Supreme Court, Appellate Division, First Department at 27 Madison Avenue in Manhattan.

In announcing his Personnel Order seeking to abolish prevailing wage for City employees, the Mayor falsely claimed that the Comptroller had traditionally set inflated wage rates for City employees pursuant to his authority under the Labor Law which were not reflective of private sector wage rates.

In the last three prevailing wage hearings held for City employees, Comptroller Liu determined that:

o City-employed Sewage Treatment Workers, who were out of contract for almost 8 years, should receive the same wages and benefits that Con Edison employees receive for working in power plants that have similar water treatment functions;

o City-employed Laborers, who were out of contract for almost 10 years, should receive the same wages and benefits that Local 79 Mason Tenders receive for doing similar construction work;

o City-employed Locksmiths should receive an average wage and benefit rate based on what their private-sector counterparts make, since there is no prevailing union representing

locksmiths in the private sector.

The determinations for Sewage Treatment Workers and City Laborers involved large back-pay awards since they had been out of contract for so long due to the City's lack of willingness to negotiate.

The Mayor's own record of settling contracts with municipal unions speaks for itself. Through the end of the Mayor's second term in 2009, many of the contracts for City employees were settled by Consent Determination. In 2009, 74 City titles were settled this way, a 7-year high.

In 2010, the first year of the Mayor's 3rd term, the City settled with only 2 City titles, for employees working in Sewage Treatment Plants, a settlement driven by the result of the hearing and determination for Sewage Treatment Workers.

In 2011, only one City title settled. In 2012, not a single City title settled. The Comptroller's Office is now proceeding under the assumption that every single Part 38 City title will have to go through an administrative hearing rather than reach a settlement agreement with the City.

NYPD/FDNY Painting Contractor Debarred for Kickback Scheme

continued from front page

of "kickbacks" under the New York prevailing wage law. The Comptroller further determined that Abbey Painting and Alam owed six workers \$139,474.52 in wages and interest and owed the City of New York a civil penalty of \$34,868.63. Not only were Abbey Painting and Alam barred from bidding on public works contracts for the next five years, but the Comptroller held Alam personally liable for the violation.





UPDATE:

COMPTROLLER LIU'S INITIATIVES INVOLVING PUBLIC WORKS

Comptroller Liu has supported several initiatives that would increase the number of public works projects and jobs in New York City over the course of the next few years and improve transparency and accountability for those projects and jobs:

▶ **Comptroller Liu and Mayor Bloomberg Announce Sweeping Reforms to City Subcontracting Requirements**

Comptroller John C. Liu and Mayor Michael R. Bloomberg have announced that New York City will become the first municipality in the country to establish a comprehensive subcontracting database and publicly report payments made by prime contractors to subcontractors, which will greatly enhance the City's – and the public's – ability to monitor billions of dollars worth of contract activity. The new reforms will also strengthen the City's capacity to detect and address potentially fraudulent billing practices, further ensure the timeliness of payments from contractors to subcontractors and more seamlessly track the utilization of minority- and women-owned businesses on subcontracted City work. The Mayor's Office of Contract Services and the Comptroller's Office have been working on this subcontracting initiative for more than a year, and recently began a pilot program with vendors serving as initial testers.

Beginning March 2013, on any new contract valued over \$1 million, all prime vendors will have to disclose information on the City's Payee Information Portal, including the names of subcontractors hired as well as each and every payment to them. In June, the ceiling is lowered to contracts above \$250,000, which will ensure approximately 96 percent of all dollars spent on City contracts are captured in this new database. The work to design and develop this new tracking system was completed by CGI, based on a fixed-price deliverable contract for a cost of \$1.6 million. In the event a prime vendor fails to carry out their responsibility, the City has the right to withhold payment until all requirements have been met.

The City's new requirements will create a central infrastructure to improve oversight, further reduce the possibility of fraudulent billing and ensure that the City is meeting its minority and women-owned business enterprise goals. Since Local Law 129 was first enacted in December 2005, certified minority and women-owned businesses have won thousands of contracts – worth billions of dollars in total aggregate value – in prime and subcontracts with the City of New York.

Once these new protocols are established, each payment and data set will be fully inte-

grated with the Comptroller's Checkbook NYC fiscal transparency website – which was launched with the assistance from the Mayor's Office of Contract Services – placing never-before-seen subcontract data in the public domain.

▶ **Capital Acceleration Program**

This program was designed to address the City's infrastructure challenges, create real jobs and save taxpayer money. This accelerates already-approved City construction, like repairs to schools and repaving of roads. It will save taxpayers \$200 million in debt service by taking advantage of historically low interest rates and construction costs. And, it creates 8,000 jobs! Comptroller Liu is pleased that the Mayor has embraced this idea and has committed to accelerating \$1 billion of the City's construction plan.

▶ **\$1 Billion TRS Pledge for Investment in Post-Sandy Reconstruction and Critical Infrastructure**

The Teachers Retirement System has pledged, as part of the Clinton Global Initiative, to invest \$1 billion to restore infrastructure damaged by Superstorm Sandy. These investments will help rebuild housing and strengthen New York's coastline, and earn a solid return for the pension funds. And once again, thousands of jobs would be created.

▶ **Green Apple Bonds Proposal**

These bonds provide money that the City would borrow to environmentally upgrade buildings such as our schools. The debt service on these bonds would be more than made up for by the savings we gain from lowering energy bills. We would issue the first set of Green Apple Bonds to eliminate the source of dangerous PCBs in 700 schools by 2015, six years ahead of the Administration's current schedule and at savings of \$339 million.. This would protect students and teachers from toxic waste and save taxpayers \$339 million from lower electric bills. With Green Apple Bonds, we would save green by going green! And, it would create 3,000 jobs.

UPDATE: **New York Court of Appeals Decides Prevailing Wage Coverage Issue**

In February 2013, the New York Court of Appeals decided the prevailing wage case of **M.G.M. Insulation v. Gardner**, 20 N.Y.3d 469 (2013). In this case, the Bath Volunteer Fire Department, a not-for-profit corporation funded by the Village of Bath to provide fire protection, acquired its own property and entered into a contract to build a new firehouse after the Village declined to do so. The New York State Department of Labor concluded that New York prevailing wage law applied to the project and the contractor took the DOL to court to challenge that determination. The Appellate Division, Third Department, agreed with the DOL and found that prevailing wage requirements applied to the project. The contractor appealed.

The Court of Appeals reversed the Appellate Division's decision, and ruled that prevailing wage requirements did not apply, on the grounds that the volunteer fire department was not a public agency as defined in the statute. Although the Court of Appeals noted that the 2007 Pyramid amendment to Labor Law §220 extended prevailing wage coverage to public works contracts entered into by third parties acting on behalf of public agencies, the Court did not apply the Pyramid amendment because the contract in the case predated the 2007 Pyramid amendment, and the Court declined to apply the amendment retroactively. However, the Court of Appeals left open the possibility that "certain volunteer fire department contracts may fall under the prevailing wage law based on the [Pyramid] amendment language."

**LEARN
TIPS FOR WORKERS -
PROTECT YOUR
RIGHTS
at
[http://www.comptroller.nyc.gov/
KnowYourRights/](http://www.comptroller.nyc.gov/KnowYourRights/)**