

## Rules of the City of New York

### Title 28. Housing Preservation and Development.

#### Chapter 50. Building Service Employees Prevailing Wage Requirements and Construction Workers Minimum Average Hourly Wage Requirements in Certain Buildings Receiving Benefits Pursuant to Real Property Tax Law Section 421-a.

##### **§50-01. Definitions.**

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As used in this chapter, the following terms shall have the following meanings. Capitalized terms that are not specifically defined in this chapter shall have the meanings set forth in the Act (with respect to properties receiving benefits pursuant to such act), the New 421-a Act (with respect to properties receiving benefits pursuant to such act), the Extended Affordability Act (with respect to properties receiving benefits pursuant to such act), or the Minimum Average Hourly Wage Act, as relevant.

**125% Limit.** "125% Limit" shall mean, with respect to any unit, that the income of the household renting or purchasing such unit does not exceed one hundred twenty-five percent of the area median income, adjusted for family size, at the time that such household initially occupies such unit, and that either (a) for a multiple dwelling owned and operated as a rental, the rent at the time of initial rental and upon each subsequent rental following a vacancy does not exceed thirty percent of one hundred twenty-five percent of the area median income, adjusted for family size, minus the amount of any applicable Utility Allowance, or (b) for a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the sales price at the time of initial sale results in mortgage payments (including both interest and principal calculated at the Mortgage Rate and assuming the mortgage constitutes 90% of the purchase price) and common charges or carrying charges, respectively, that, collectively, do not exceed thirty percent of one hundred twenty-five percent of the area median income, adjusted for family size.

**125% Unit.** "125% Unit" shall mean (a) if a multiple dwelling is owned and operated as a rental, a unit that complies with the 125% Limit upon initial rental and upon each subsequent rental following a vacancy, or (b) if the multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, a unit that complies with the 125% Limit upon the initial sale of such unit.

**Act.** "Act" shall mean subdivision 8 of Section 421-a of the Real Property Tax Law.

**Agency.** "Agency" shall mean the department of housing preservation and development.

**Applicant.** "Applicant" shall mean an applicant for Benefits and any successor to such applicant, including, but not limited to, any Owner, or any employer of Building Service Employees for such applicant, successor or Owner, including, but not limited to, a property management company or contractor.

**Apprenticeship Program.** "Apprenticeship Program" shall mean an apprenticeship program registered with the New York State Department of Labor in conformity with the provisions of Article 23 of the Labor Law.

**Benefits.** "Benefits" shall mean real property tax exemption benefits pursuant to Section 421-a of the Real Property Tax Law.

**Benefits Ineligibility Letter.** "Benefits Ineligibility Letter" shall mean the letter that the Agency issues to the Applicant indicating that such Applicant is ineligible for any real property tax exemption benefits pursuant to the Act, the new 421-a Act, or the Extended Affordability Act, as applicable.

**Comptroller.** "Comptroller" shall mean the comptroller of the city of New York or his or her designee.

**Comptroller Schedule.** "Comptroller Schedule" shall mean the annual Building Service Employee Prevailing Wage Schedule published by the Comptroller that is in effect at the time the relevant Building Service Employee performs the work and that is published at [www.comptroller.nyc.gov/wages](http://www.comptroller.nyc.gov/wages).

**Construction Benefits.** "Construction Benefits" shall mean Benefits for the period before issuance of either a permanent certificate of occupancy for the entire building or a temporary certificate of occupancy for all of the residential areas contained therein.

**Extended Affordability Act.** "Extended Affordability Act" shall mean paragraph (g) of subdivision 17 of Section 421-a of the Real Property Tax Law.

**Final Certificate of Eligibility.** "Final Certificate of Eligibility" shall mean either (a) the document issued by the Agency in accordance with chapter six of this title that provides for Post-Construction Benefits; (b) the document issued by the Agency in accordance with chapter 49 of this title which provides the Extended Benefit; or (c) the document issued by the Agency in accordance with chapter 51 of this title that provides for Affordable New York Housing Program Benefits.

**Minimum Average Hourly Wage Act.** "Minimum Average Hourly Wage Act" shall mean subdivision 16(c) of *Section 421-a of the Real Property Tax Law*.

**Mortgage Rate.** "Mortgage Rate" shall mean the single family mortgage rate for a thirty-year fixed rate loan established by the Federal Home Loan Mortgage Association and the Federal National Mortgage Association plus 150 basis points that is either (a) for purposes of the application for a Preliminary Certificate of Eligibility, quoted for the month in which the construction of such multiple dwelling commences, or (2) for purposes of the application for a Final Certificate of Eligibility, quoted for the month in which the first certificate of occupancy or temporary certificate of occupancy for the first unit in such multiple dwelling that is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, is issued.

**New 421-a Act.** "New 421-a Act" shall mean paragraph (h) of subdivision 16 of Section 421-a of the Real Property Tax Law.

**Order.** "Order" shall mean an order issued by the Agency pursuant to paragraph (d) of the Act, subparagraph (iv) of the New 421-a Act or subparagraph (iv) of the Extended Affordability Act, respectively, that either (a) adopts, in whole or in part, or rejects a Report and Recommendation, or (b) approves any Stipulation of Settlement between the Comptroller and the Applicant.

**Owner.** "Owner" shall mean the fee owner of the real property receiving Benefits and any ground lessee, master lessee, sublessor or sublessee of such real property.

**Post-Construction Benefits.** "Post-Construction Benefits" shall mean Benefits for the period after issuance of either a permanent certificate of occupancy for the entire building or a temporary certificate of occupancy for all of the residential areas contained therein.

**Preliminary Certificate of Eligibility.** "Preliminary Certificate of Eligibility" shall mean the document issued by the Agency in accordance with chapter 6 of this title that provides for Construction Benefits.

**Prevailing Wage.** "Prevailing Wage" shall mean the prevailing wage and supplement rates for the various classifications set forth in the Comptroller Schedule.

**Prevailing Wage Requirement.** "Prevailing Wage Requirement" shall mean the requirements under the Act, the New 421-a Act or the Extended Affordability Act, respectively, and this chapter that are applicable, with respect to the Act or the New 421-a Act, to any Multiple Dwelling whose construction began on or after December 28, 2007, and with respect to the Extended Affordability Act, to any Extended Affordability Property, except as otherwise provided in paragraph (e) of the Act, subparagraph (v) of the New 421-a Act, or subparagraph (v) of the Extended Affordability Act, as applicable, that all Building Service Employees receive the Prevailing Wage for the duration of the applicable Benefits period. Notwithstanding anything to the contrary contained herein or in the Act, the New 421-a Act or the Extended Affordability Act, such requirements shall only be applicable to persons who are employed at a building, eligible site or extended affordability property, as applicable, for at least a ninety day period.

**Report and Recommendation.** "Report and Recommendation" shall mean a report and recommendation issued by the Comptroller or the Comptroller's designee after a hearing is conducted regarding an alleged violation of the Prevailing Wage Requirement.

**Stipulation of Settlement.** "Stipulation of Settlement" shall mean a stipulation of settlement executed by the Comptroller and an Applicant regarding an alleged violation of the Prevailing Wage Requirement.

**Utility Allowance.** "Utility Allowance" shall mean an allowance set forth by the Agency for the payment of utilities where the tenant of a 125% Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

## **§50-02. Prevailing Wage for Apprentices.**

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The Prevailing Wage for purposes of an apprentice in a classification may only be the prevailing apprentice wage and supplement rate set forth in the Comptroller Schedule if such apprentice has been individually registered in an Apprenticeship Program prior to his or her employment as an apprentice on the applicable work.

## **§50-03. Compliance with Requirement to Pay Supplements.**

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The obligation to pay prevailing supplements may be discharged by either the provision of (a) bona fide fringe benefits that cost no less than the prevailing supplement rate in the Comptroller Schedule, (b) a supplement to the hourly wage in an amount no less than such prevailing supplement rate, or (c) a combination of bona fide fringe benefits and wage supplements that, collectively, costs no less than such prevailing supplement rate. The provision of a dwelling unit free of charge to a Building Service Employee shall be considered a bona fide fringe benefit with a cost of no more than the value of prevailing rentals in the locality for comparable dwelling units. Notwithstanding the foregoing, the obligation to pay prevailing wages cannot be reduced or discharged through the provision of bona fide fringe benefits that cost more than the prevailing supplement rate in the Comptroller Schedule.

## **§50-04. Prevailing Wage Violations.**

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a. An Applicant found to have violated the Prevailing Wage Requirement shall be liable for any underpayment of the Prevailing Wage for work performed by Building Service Employees for no more than two years from the earlier of (a) the date that the related complaint was filed with the Comptroller, or (b) the date of the commencement of the Comptroller's independent investigation into the Applicant's compliance with the Prevailing Wage Requirement.

b. An Applicant found to have violated the Prevailing Wage Requirement shall be liable for interest on the underpayment of the Prevailing Wage at a rate of not less than six per cent per year and not more than the rate of interest then in effect as prescribed by the superintendent of banks pursuant to **Section 14-a of the Banking Law** per annum from the time such Prevailing Wage should have been paid. The rate of interest on such underpayment shall be calculated with due consideration to the number of persons employed by the Applicant, the good faith of the Applicant, the gravity of the Prevailing Wage violation, the history of the Applicant's previous Prevailing Wage violations and the Applicant's failure to comply with recordkeeping or other non-wage requirements.

c. An Applicant found to have violated the Prevailing Wage Requirement shall be subject to a civil penalty in an amount not exceeding twenty-five percent (25%) of the underpayment of the Prevailing Wage and the interest found to be due. In assessing the amount of the civil penalty, due consideration shall be given to the size of the Applicant, the good faith of the Applicant, the gravity of the violation, the history of previous violations of the Applicant, and the failure to comply with recordkeeping or other non-wage requirements. The civil penalty shall be paid to the Comptroller for deposit in the city treasury.

d. An Owner shall be jointly liable for any violation of the Act, the New 421-a Act or the Extended Affordability Act, as applicable, at the property receiving Benefits without regard to whether the Building Service Employees were directly employed by such Owner.

## **§50-05. Prevailing Wage Requirement Orders.**

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a. After receiving from the Comptroller a Report and Recommendation with a summary of the underpayment setting forth the respective amounts of Prevailing Wage underpayment and interest due to each Building Service Employee, the proposed civil penalty and the complete hearing record, the Agency shall issue an Order, which shall include instructions for payment of any such respective amounts of Prevailing Wage underpayment, interest and civil penalty to the Comptroller.

b. If the Agency approves a Stipulation of Settlement, it shall have the full force and effect of an Order of the Agency.

c. The Agency shall mail an Order to all parties named in such Order. The Order shall be deemed to have been received by the third business day after such Order has been deposited in the United States mail.

## **§50-06. Benefit Revocation.**

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The Agency shall commence benefit revocation proceedings pursuant to chapter 39 of this title if: (a) an Applicant fails to make the payments to the Comptroller required by an Order within 120 calendar days of receiving the Order, in which the sole cause for such revocation shall be the failure to make such payments on or before the prescribed deadline, (b) two Orders determining a willful failure to pay the Prevailing Wage for the same multiple dwelling have been issued within a six-year period, or (c) an Order

determines a willful failure to pay the Prevailing Wage that involves a falsification of payroll records or the kickback of wages or supplements.

## **§50-07. Agency Determination of Prevailing Wage Exemption.**

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1. An Applicant who requests a determination of exemption from the Prevailing Wage Requirement pursuant to the Act, the New 421-a Act, or the Extended Affordability Act, as applicable, must submit all of the documentation necessary to prove that:

(a) with respect to a multiple dwelling that is not receiving benefits pursuant to subdivisions sixteen or seventeen of Real Property Tax Law §421-a, at least fifty percent of the dwelling units in such Applicant's building are 125% Units, including, but not limited to, (i) with respect to a multiple dwelling owned and operated as a rental, the initial rents for such 125% Units, the income certifications for the initial occupants of such 125% Units, and proof that the building is required to maintain such 125% Units during the entire period of Post-Construction Benefits, and, (ii) with respect to 125% Units in a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the initial unit sale prices and the income certifications for all of the initial purchasers of such 125% Units;

(b) with respect to an Eligible Multiple Dwelling that is receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, all of the dwelling units in such Eligible Multiple Dwelling are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Restriction Period or the Extended Restriction Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Eligible Multiple Dwelling is required to maintain such Affordable Housing Units and 125% Units during the entire Restriction Period or Extended Restriction Period, as applicable; or

(c) with respect to an Extended Affordability Property that is receiving benefits pursuant to subdivision seventeen of Real Property Tax Law § 421-a, all of the dwelling units in such Extended Affordability Property are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Extended Affordability Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Extended Affordability Property is required to maintain such Affordable Housing Units and 125% Units during the entire Extended Affordability Period.

2. An Agency determination of ineligibility for an exemption from the Prevailing Wage Requirement is deemed a final determination when the Agency issues either an Order or a Benefits Ineligibility Letter, after which the only review available to the Applicant is pursuant to Article 78 of the Civil Practice Law and Rules.

## **§50-08. Contractor Certified Payroll Report.**

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a. Eligible Multiple Dwellings that are required to submit a Contractor Certified Payroll Report pursuant to paragraph (vi) of the Minimum Average Hourly Wage Act shall use the form provided on the Comptroller's website at, and shall identify all Construction Workers employed by the contractor or subcontractor and set forth the dates for all hours worked, the hourly wage and benefit rates, and the weekly gross and net pay amounts for each such Construction Worker. The Contractor Certified Payroll Report shall be accompanied by employee daily sign-in logs in the form provided on the Comptroller's website at, and shall identify all Construction Workers employed by the contractor or

subcontractor, set forth the daily start and end times of work for each such Construction Worker, and include each such Construction Worker's original signature.

b. Notwithstanding anything to the contrary contained in subdivision a of this section, the requirement for employee daily sign-in logs shall be waived for any Construction Work that took place on any days prior to the effective date of this subdivision.

## **§50-09. Failure to Submit Required Reports, Failure to Submit Accurate Reports or Failure to Pay Minimum Average Hourly Wages in Accordance with the Minimum Average Hourly Wage Act.**

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a. The Comptroller shall only approve a plan submitted by the Third Party Fund Administrator pursuant to paragraph (vii) of the Minimum Average Hourly Wage Act if distribution of the deficiency is limited to all Construction Workers whose wages equal less than the minimum average hourly wage applicable to such Eligible Site.

b. In the event that the Third Party Fund Administrator cannot distribute funds to any Construction Workers within one year of receiving the Comptroller's approval of such Third Party Fund Administrator's plan, the Third Party Fund Administrator shall pay the unclaimed funds to the Comptroller and the Comptroller shall hold such funds for such Construction Workers until they claim their awards.

c. In the event that any contractor or subcontractor does not submit the Contractor Certified Payroll Report, or if it appears to the Comptroller that any Contractor Certified Payroll Report is inaccurate, the Comptroller shall conduct an investigation to determine: (i) the actual wages paid to all Construction Workers employed by the contractor or subcontractor that did not submit the Contractor Certified Payroll Report or that submitted an inaccurate Contractor Certified Payroll Report, and, if relevant, (ii) the difference between the actual wages paid and the wages set forth in the inaccurate Contractor Certified Payroll Report.

d. The Comptroller shall provide the Independent Monitor with a statement of actual wages paid to all Construction Workers employed by a contractor or subcontractor that did not submit the Contractor Certified Payroll Report, and the Independent Monitor shall use such statement to complete the Project-Wide Certified Payroll Report.

e. A contractor or subcontractor who submits an inaccurate Contractor Certified Payroll Report shall be (i) liable for the difference between the wages set forth in such Contractor Certified Payroll Report and the actual wages paid, with interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to Section 14-a of the Banking Law per annum from the date of the underpayment to the date of the payment of such difference (collectively, "Differential") and (ii) subject to a civil penalty in an amount not exceeding twenty-five percent (25%) of the Differential. In assessing the amount of the civil penalty, due consideration shall be given to the size of the contractor or subcontractor, the good faith of the contractor or subcontractor, the gravity of the violation, the history of previous violations of the contractor or subcontractor, and the failure to comply with recordkeeping or other non-wage requirements. The civil penalty shall be paid to the Comptroller for deposit in the city treasury.