

September 2014

Ruling Clears Way for New York City Service Worker Wage Hike

Some New York City service workers could have their wages and benefits doubled following an August 8, 2014, court order removing the last obstacle to implementing New York City's own prevailing wage law.

Enacted over the veto of then-Mayor Michael Bloomberg, NYC Administrative Code § 6-130, the Service Worker Prevailing Wage Ordinance (Ordinance), mandates that certain employers pay building service workers in New York City prevailing wages and benefits established annually by the New York City comptroller. With certain limited exceptions, the Ordinance applies to building service workers employed by the following entities:

- Those that receive \$1 million or more each year in economic development aid from the City or a City economic development entity (defined by the ordinance)
- Successors, contractors, or subcontractors of covered entities receiving economic aid of \$1 million or more
- Those that lease 10,000 square feet or more of commercial or office space to the City or its agencies where the leased space amounts to more than 50 percent of the building (or 80 percent of the building on Staten Island and certain other areas)

In July 2014, the comptroller published a prevailing wage schedule implementing the new rates. (Prior to the enactment of the Ordinance, the comptroller had already exercised the authority to set prevailing wage and benefit rates for service contractors performing under public works contracts in New York City under New York Labor Law § 230.) To view the full schedule, [click here](#).

The new prevailing wage and benefit schedule sets to increase the minimum wage for covered service workers by occupation, ranging from \$11 per hour (for boiler service personnel) to over \$36 per hour (for refrigeration engineers), with additional hourly benefits beginning around \$5 per hour and increasing. At its lowest point, including hourly benefits, the Ordinance could result in an hourly rate double that of the current state minimum wage (\$8 per hour).

The Ordinance holds a storied, if not tortured, past. Adopted by the City Council in the spring of 2012, Mayor Bloomberg's subsequent veto was overridden 44 to 4. Mayor Bloomberg then sued the City Council in state court, claiming that New York state minimum wage law preempted the Ordinance. In

August 2013, a state court agreed with Mayor Bloomberg and enjoined enforcement of the Ordinance. In June 2014, newly elected Mayor Bill de Blasio moved to vacate the decision. Absent any opposition, the court granted the motion, as all sides to the dispute agreed that the Ordinance should be implemented.

As noted, covered employers (and their contractors and subcontractors) will have to consider not only their employees' hourly wages but also the mandated supplemental benefits provided. Supplemental benefits include a host of fringe benefits, such as health insurance, life insurance, retirement contributions, long-term disability, vacation leave, and other benefits that have an economic impact on the employer. Supplemental benefits do not include mandated payments such as Social Security or mandated short-term disability insurance. If such benefits are not provided or are not provided in the minimum amount mandated by the prevailing wage schedule, the covered employers must supplement their employees' wages by the additional amounts required.

The Ordinance includes antidiscrimination and antiretaliation provisions, mandates the posting of a written notice of rights, provides for a private cause of action for aggrieved employees, and authorizes an award of compensatory and punitive damages, injunctive relief, and attorney's fees.

Given that at least one court has already held that state law preempts the Ordinance, its ultimate fate and impact on New York City workers remains unclear. Nevertheless, employers arguably covered by the Ordinance may wish to review with their legal counsel the impact and effect of these new requirements.

For more information or if you have questions about how the issues raised in this alert affect your policies and practices, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#):

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