



COUNTY OF NASSAU

**RULES OF THE COUNTY EXECUTIVE:
THE NASSAU COUNTY LIVING WAGE LAW
MISCELLANEOUS LAWS TITLE 57**

EFFECTIVE NOVEMBER 10, 2010, AS AMENDED

Section 1. Authority and Usage

a. These Rules are promulgated pursuant to Local Law 1-2006, section 7(b) which authorizes the County Executive to promulgate rules to implement the provisions of the “Nassau County Living Wage Law”, Title 57 of the Miscellaneous Laws of Nassau County.

b. Wherever the term “Law” or “Living Wage Law” is used in this document, it shall mean Local Law 1-2006, as amended, otherwise known as the Nassau County Living Wage Law. Whenever the terms “Rule” or “Rules” are used in this document, it shall mean these Rules of the County Executive regarding the Nassau County Living Wage Law.

Section 2. Clarification of Terms

a. Awarded. “Awarded” shall mean that time at which a contractor is selected by the County, or any department of the County, to receive county financial assistance, even if that time is before execution of a county financial assistance agreement by all parties or approval of such agreement by the County Legislature.

See Living Wage Law, § 5(a) “Certification of Compliance” and § 10 “Other Provisions”

b. County Service Contract. “County Service Contract” shall mean any contract let to a contractor by the county for the furnishing of services to or for the county and that involves an expenditure equal to or greater than twenty-five thousand dollars. A contract for the sale of goods to the County, or a contract for the sale of goods where incidental services are being provided to the County, are not considered County Service Contracts. This definition shall not include contracts awarded pursuant to the County’s emergency procurement procedure as set forth in section 2206 of the county charter, inter-governmental agreements, agreements with state or local public authorities or agreements with local development corporations incorporated pursuant to section 1411 of the not-for-profit corporations law.

c. County Financial Assistance. “County Financial Assistance” shall mean any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of assistance of more than fifty thousand dollars given by or through the authority or approval of the county to an entity having at least ten employees. County financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zone-related incentives.

d. Disabled Employee. For purposes of Section 3(c)(2) of the Law, “disabled employee” shall mean any employee whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. An employee may not be considered a disabled employee under the Law unless such employee is covered by a sub-minimum wage certificate issued by the United States Department of Labor in compliance with 29

U.S.C. § 214(c) and 29 C.F.R. Part 525, or would qualify to receive such a sub-minimum wage certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

e. Employee and Employer.

i. Under Section 1 of the Living Wage Law, an “Employee” for the purposes of a county service contract is an employee of a county contractor “pursuant to one or more service contracts and who expends any of his or her time thereon.” An Employee may be:

A. Any person hired by a County contractor specifically to work on the County Service Contract at issue

B. Any person employed by the County Contractor who works on the specific services contemplated by the County Service Contract

ii. An Employee is not:

A. An employee who provides services that are only incidental to the services specified in the County Service Contract.

B. An employee who does not provide any services contemplated under the County Service Contract in Question

iii. An entity that since 2005 has operated and continues to operate an “assisted living residence” in Nassau County and which receives Medicaid funds for such services, is not considered an Employer under the Living Wage. For purposes of these rules, “assisted living residence” shall have the meaning set forth in section 4651 of the Public Health Law.

iv. In relation to County Financial Assistance, an employee is any person employed by a County Financial Assistance Recipient (CFAR) and who expends at least half of his or her time on the funded project/program or property which is the subject of county financial assistance. For the purposes of this definition, “any person who expends at least half of his or her time on the funded project/program or property” shall refer to any employee of the CFAR who expends at least half of his or her time on 1) a County-funded project or program which the CFAR administers related to the delivery of services or 2) a County-funded project related to the improvement, maintenance or demolition of property of the CFAR.

See Living Wage Law, § 2 “Employee,” “Employer”

f. Enter Into. “Enter into” shall mean that time at which both parties have signed the contract in question.

See Living Wage Law, § 2 “County Service Contract” and § 10(a) “Other Provisions”

3. Amendments, Extensions and Renewals

a. Renewals and Extensions. Where an existing County Financial Assistance Agreement, County Service Contract, or County Lease is renewed or extended after the effective date of the Law, such agreement is a new County Financial Assistance Agreement, County Service Contract or County Lease, as the case may be, and is subject to the applicable provisions of the Law.

b. Determination of Applicability.

i. County Service Contracts.

A. Any renewal of a County Service Contract is subject to the Living Wage Law if the total expenditure by the County under the renewal is \$25,000 or greater.

B. If a County Service Contract is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount \$25,000 or over, or if such amendment itself involves an expenditure of \$25,000 or over. In no event shall the Law apply in a situation where an amendment involves an expenditure of less than \$25,000 and the original agreement already involves an expenditure of \$25,000 or over.

ii. County Financial Assistance Agreements.

A. Any renewal of a County Financial Assistance Agreement is subject to the Living Wage Law if the total expenditure by the County under the renewal is greater than \$50,000.

B. If a Financial Assistance Agreement is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount over \$50,000, or if such amendment itself involves an expenditure over \$50,000. In no event shall the Law apply in a situation where an amendment involves an expenditure of \$50,000 or less and the original agreement already involves an expenditure over \$50,000.

iii. County Leases. Any renewal, extension or modification of a County Lease is subject to the provisions of the Living Wage Law.

See Living Wage Law, §10(a) "Other Provisions"

4. Waiver of the Law

a. Application of the Provision

i. Any County Contractor may apply for a waiver of the provisions of the Law. In order to qualify as a County Contractor, the applying organization must have a County Service Contract with the County of Nassau. A County Service Contract is a contract which contemplates providing a service to the County (not goods or any service performed only to deliver goods) for which the County is paying \$25,000 or more. Both non-profit and for-profit County Contractors may apply for a waiver. A renewal, extension or other time-related amendment to a County Service Contract is considered a new County Service Contract and is subject to the provisions of the Law, as they are applicable, if a County Service Contract is renewed, extended or amended in such a manner as to increase the term of the County Service Contract, a new request for a waiver of such renewed, extended or amended contract must be made to the Living Wage Waiver Review Officer.

ii. At this time, the Living Wage Law does not allow a County Lessee or an entity receiving County Financial Assistance to apply for a waiver of the Law's provisions.

b. Request for a Waiver. The following procedures have been established by the County Executive for requesting a waiver of the provisions of the Living Wage Law:

i. Request for a waiver must be made to the official designated, pursuant to section 9 of the Living Wage Law, by the County Executive to review waiver requests (the "Living Wage Waiver Review Officer"). Since a waiver request must be made by a County Contractor who already has a contract with the County to provide services, a request for a waiver may only be made after the contract in question is entered into with the County, but must be made within one month of the County's execution of the subject contract. Requests submitted later shall be denied as untimely unless the Living Wage Waiver Review Officer determines, in his or her sole discretion, that the contractor has established a reasonable excuse for the delay in filing. If a County Contractor intends to submit a waiver application and has a reasonable basis for anticipating that it may be granted, then while the waiver request is pending, the Contractor may compensate its employees as if a waiver had been obtained. If the waiver is ultimately denied, the Contractor will be required to compensate its employees retroactively for the additional compensation to which they would have been entitled pursuant to the Living Wage Law from the commencement date of the contract. The Living Wage Waiver Review Officer's denial shall provide that failure to make this retroactive compensation within 60 days of receiving notice of the determination shall be considered a violation of these Rules and subject the contractor to the penalties set forth in section 7 of the Living Wage Law.

ii. A request for a waiver must be made on the approved form designated "Request for Waiver of the Provisions of the Nassau County Living Wage Law." This form is available on the County's website at

<http://www.nassaucountyny.gov/website/DB/govtcontracts/nassau.html>. Additional forms also may be requested by contacting the agency with which the requesting organization has a contract.

All inquiries regarding waivers to the Living Wage Law should be sent to:

Livingwage@nassaucountyny.gov

iii. Except for those requesting organizations with County Service Contracts listed in section 4(b)(iv)(E)(3) below, and except for County Contractors providing Personal Care Aide Services or any services, such as temporary personnel services, for which payments are not based on a budget included in the contract, those requesting organizations which plan to request a waiver once a County Service Contract has been entered into must include, in their bid or proposal for the specific County Service Contract, a budget breakdown stating the amount of the budget allocated to wages (*assuming the Living Wage Law applies*), the amount of the budget allocated to fringe benefits valued in accordance with a method to be determined by the Comptroller pursuant to section 9(a) of the Law, and the amount of the budget allocated to services and other contract expenses. The budget breakdown also shall include such additional information as may be prescribed by rules promulgated by the Comptroller. For the purposes of these Rules, "Personal Care Aid Services" shall refer to those services provided by County Contractors pursuant to Title 11 of Article 5 of the New York Social Service Law and Title XIX of the United States Social Security Act.

A. In any budget breakdown submitted, the requesting organization must include only those employees who are included within the definition of "Employee" described above.

B. Those County contractors who have been awarded a contract through Executive Order No. 1 of 1993, a state or federal grant, General Municipal Law section 104, or any other state or federal rule or regulation must submit the above budget breakdown to the contracting agency before such contract is entered into with the County in order to be eligible for a waiver.

iv. A waiver request must contain the following information:

A. The name of the organization

B. The address of the organization

C. The County-issued contract number for the County Service Contract to which the request for waiver pertains. This number may be obtained from the County department with which the requesting organization contracts.

D. The name and email address of the Chief Executive Officer of the requesting organization

E. The criteria (hereinafter, the "Criteria") for qualifying for a waiver under the provisions of the Law. Currently, a requesting organization must meet either Criteria 1, 2, or 3 below, and, if Criteria 1, or 2 are cited, must meet Criterion 4 below:

1. The highest paid officer or employee of the requesting organization earns a salary plus fringe benefits, valued in accordance with a method established in rules promulgated by the Comptroller which, when cumulatively calculated on an hourly basis, is less than six times the lowest wage or salary plus fringe benefits paid by the requesting organization to any individual it employs. For all individuals employed by the organization who are paid a salary rather than an hourly wage, the hourly salary plus fringe benefits shall be calculated by dividing the gross salary plus the value of fringe benefits paid to such worker during the contract period by the number of hours worked based on the employer's standard work week which shall not exceed 40 hours.

OR

2. Compliance with the requirements of the Living Wage Law will directly increase the requesting organization's expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

OR

3. The requesting organization is providing any of the following services to the County and compliance with the Living Wage Law would exceed the amount, per hour or per diem (as the case may be), reimbursed to the County by any State or Federal Source:

- i. Services under the Expanded In-Home Services for the Elderly Program (EISEP)
- ii. Foster care services under the New York Social Services Law.
- iii. Residential domestic violence services under the New York Social Services Law.
- iv. Residential care, educational and vocational training, physical and mental health services, and employment counseling services to residents of the Juvenile Detention Center under the New York Executive Law.

AND (if Criteria 1 or 2)

4. When the requesting organization placed a bid or submitted a proposal for the County Service Contract at issue, if payments under the contract are to be

based on a budget, the Contractor must have included in its submitted budget a breakdown of the wages and fringe benefits, valued in accordance with a method determined by the Comptroller, paid to employees of the requesting organization who would be covered under the Living Wage Law. This requirement shall not apply to County Contractors providing Personal Care Aide Services or any services, such as temporary personnel services, for which payments are not based on a budget included in the contract.

F. A statement that, if a waiver is granted, the requesting organization will decrease its budgeted wage and fringe benefits allocation to that amount the requesting organization would have paid its employees had the requirements of Living Wage Law not been applied. The amount to be paid by the County to the requesting organization will be reduced accordingly by contract amendment. This requirement shall not apply to County Contractors listed in section 4(b)(iv)(E)(3) or those providing Personal Care Aide Services or any services, such as temporary personnel services, for which payments are not based on a budget included in the contract.

G. The notarized signature of the requesting organization's Chief Executive Officer.

v. A request must be accompanied by documentation supporting the Criteria claimed by the requesting organization.

A. If Criterion (1) is cited in the request, the requestor must include as part of the material submitted with its application, a separate statement, certified in an affidavit by the chief financial officer of the requesting organization as true and accurate, of the wages and fringe benefits paid or projected to be paid, on an hourly basis, of the highest and lowest paid individuals employed by the requesting organization.

B. If Criterion (2) is cited in the request, the requestor must provide a copy of the requesting organization's budget for the last fiscal year along with a copy of the organization's expected budget taking into account increases in salary and/or fringe benefits as a result of compliance with the Living Wage Law. Both budgets must be certified in a separate affidavit as complete and accurate by the chief financial officer of the requesting organization.

C. If a requesting organization does not have an individual serving in the title of Chief Financial Officer, the organization's chief executive officer may provide the certification required pursuant to subparagraphs A, B or C above.

vi. The request form and all documentation must be sent to the following address:

County of Nassau
Living Wage Waiver Review Officer
One West Street, 5th Floor
Mineola, New York 11501

c. Waiver and Procurement

i. As a waiver may only be requested once a County Service Contract has been entered into, no waiver application may be submitted by any organization submitting a bid or proposal to the County for a County Service Contract.

ii. It shall not be a consideration in evaluating a bid or proposal that an organization submitting a bid or proposal to the County for a County Service Contract may be eligible to receive a waiver.

d. Review Procedures

i. Review of a request for a waiver must be made by the Living Wage Waiver Review Officer.

ii. Approval of a request is dependent on the requestor satisfying either criteria (1), (2), or (3) in section 4(b)(iv)(E) above and, if citing criteria (1) or (2), criterion (4) in section 4(b)(iv)(E) above. Applications not satisfying these criteria, or incomplete applications, will not be approved.

iii. The name and address of a County Contractor that applies for a waiver shall be posted on the County's web site within 10 days after a waiver request is received by the Living Wage Waiver Review Officer and deemed complete in the sole discretion of the Living Wage Review Officer. The date of posting shall be indicated on the web site and the information shall remain posted for at least forty-five (45) days prior to any decision on the granting of said waiver. Interested parties shall have 15 days from such posting to provide written comments on the application, and the Living Wage Waiver Review Officer shall inform the requestor of his or her decision to grant or deny a request in writing within thirty days following the end of the comment period. A copy of the grant or denial, together with the subject waiver application, shall be transmitted by the Living Wage Waiver Review Officer to the County Comptroller for the purposes of monitoring compliance with the Living Wage Law.

iv. In the event that a request for a waiver made pursuant to these Rules and the Law is denied by the Living Wage Waiver Review Officer, the requesting organization must comply with the provisions of the Law and these Rules, as they are applicable, including, without limitation, the payment of any unpaid compensation to the requesting organization's Employees as required under the

Law. Failure to do so may result in action by the Office of the Nassau County Comptroller to enforce the provisions of the Law.

e. Post-Award Review

- i. If the County grants a waiver, the Living Wage Waiver Review Officer shall notify the County department overseeing the subject County Service contract. The department shall, except in the case of County Contractors listed in section 4(b)(iv)(E)(3) or those with a Personal Care Aide Services contract or any services, such as temporary personnel services, for which payments are not based on a budget included in the contract, prepare an amendment to the contract reducing the amount payable to the Contractor by an amount that reflects the reduction in the Contractor's contract budget for compensation to Contractor employees made possible by the waiver. The department shall separately notify the Living Wage Unit of the Comptroller's Office in writing that the contract is being amended due to the granting of a Living Wage waiver.
- ii. If at any time during the term of the County Service Contract the requesting organization alters its budget or wages such that the organization no longer qualifies for a waiver of the Living Wage Law, the requesting organization must contact the Living Wage Waiver Review Officer who shall rescind the organization's waiver prospectively. The organization must also notify the County department with which it contracts of such alteration. In turn, the department must notify the Living Wage Unit of the Comptroller's Office, in writing, of the alteration.
- iii. If a County department is contacted in reference to such a change, the department must either:
 1. Amend the County Service Contract in question to restore any funding subtracted from the contract as a result of a waiver of the Living Wage Law and receive from the Contractor a completed Certificate of Compliance; or
 2. Terminate such Contract according to its terms.
- iv. On or before the first day of each agreement year during the term of any multi-year County Service Contract, a contractor that has been granted a waiver shall submit a sworn certification to the Living Wage Waiver Review Officer, which shall be forwarded by the Living Wage Waiver Review Officer to the Comptroller, that there has been no material change in any of the facts or circumstances that supported the Contractor's original waiver request. Failure to provide such a certification may result in the rescission of a waiver.

See Living Wage Law, § 9 "Waiver"

5. Inter-Governmental Agreements

a. The Living Wage Law shall not apply to those County Service Contracts which are entered into with any municipal corporation located within the County, any school district located within the County, and any special district located within the County.

b. County Financial Assistance Agreements and County Leases. The Living Wage Law shall not apply to a County Financial Assistance Agreement or a County Lease in the event that application of the law would conflict with the application of a federal, state or local law, rule, regulation or ordinance. For the purposes of this Rule, the Living Wage Law would not apply to a County Financial Assistance Agreement or County Lease where funding for the Agreement or Lease is derived from a Federal or state grant where the distribution of such grant funds to certain subrecipients is mandatory and non-discretionary.

See Living Wage Law, § 2 "County Service Contract," "Inter-governmental Agreement;" § 3 "Minimum Compensation;" §10 "Other Provisions"

6. Certification of Compliance

a. An updated certification of compliance with the provisions of the Living Wage Law shall be submitted to the County on or before the first day of each agreement year during the term of any County Service Contract.

b. For the purposes of updating a certification of compliance, a "material change" as used in the Law shall be limited to the following:

i. Any determination by the County Comptroller that the contractor has violated any provision of the Law.

ii. Any instance during the preceding year in which the contractor has been found by a court or governmental agency to have violated federal state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or where any governmental body has initiated a judicial action, administrative proceeding or investigation of the contractor in regard to any of the above laws.

c. For purposes of sections 6(b) and 7(d) of the Law, suspension or termination of a county lease shall be available as a remedy for a failure to comply with the Law only where such lease so provides.

See Living Wage Law, § 5 "Certification of," § 6 "Implementation by County," § 7 "Monitoring and Enforcement"

7. Nassau County Employees

a. All Nassau County Employees are covered by the provisions of the Living Wage Law, provided, however, that Nassau County Employees covered by the collective bargaining agreement between the County and the Civil Service Employees Association are not

entitled to receive the benefits supplement rate as the term is defined in the Law. The provisions of the Law also extend to paid interns hired by the County.

b. The Living Wage Law does not apply to volunteer workers utilized by the County pursuant to the County's authority to use volunteer workers under § 2105 of the Nassau County Charter. As such, the Law does not cover unpaid interns utilized by the County.

See Living Wage Law, § 2 "Employee," "Employer;" § 10 "Other Provisions"

8. Benefit Supplement Rate

The benefit supplement rate shall be upwardly adjusted at such times as the Living Wage is adjusted in conformance with the definition of "Living wage" contained in Section 2 of the Law. Any adjustment of the benefit supplement rate shall be made in proportion to any increase of the consumer price index for medical care in the All Urban Consumers Index (CPI-U) during the twelve (12) months preceding the month prior to the time at which the living wage is adjusted. The benefit supplement rate shall only be adjusted if the above-referenced index shows an increase in such twelve-month period. In no event shall the benefit supplement rate be downwardly decreased at such times. For purposes of this Section 8, "in proportion" shall mean that the increase in the benefit supplement rate shall be of the same percentage as the increase in the consumer price index for medical care in the CPI-U as described above, rounded to the nearest hundredth of a percent; provided, however, that such increase in the benefit supplement rate shall be rounded to the nearest whole cent.

See Living Wage Law, § 2 "Benefit Supplement Rate"