

6 Things New Yorkers Should Know About **PREVAILING WAGE**



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INTRODUCTION

A private contractor awarded a public contract for the construction or maintenance of a public project in New York State is required to pay employees a “prevailing wage.” Prevailing wage rates are determined for each locality and differ according to occupation, title, and other factors.

The requirement to pay prevailing wages to laborers, mechanics and other workers on public projects is set forth in the New York State Constitution. New York State Labor Law also mandates prevailing wages for all building service workers. The State Department of Labor establishes prevailing wages for most localities, but in New York City, they are determined by the City’s Office of the Comptroller.

The standard for the prevailing wage for an occupation is the wage level set by the relevant local collective bargaining agreement with at least 30 percent of trade union membership in each jurisdiction. But the process for determining prevailing wage is neither straightforward nor transparent; little information exists in the public record about how titles are determined or which collective bargaining agreements are used as the basis for mandating wages.

Proponents of prevailing wage argue it assures a decent quality of life for workers and a high quality of construction and services in government-owned facilities. Opponents say it drives up the cost of construction and makes many projects unaffordable.¹ Several legislative initiatives have been advanced at the State and City level to extend prevailing wage requirements to public utilities, construction of affordable housing projects receiving 421-a tax exemptions and to private projects that receive government subsidies.

This report is intended to provide New Yorkers with an understanding of how prevailing wage law works so they can understand and evaluate the arguments in the current debate.

¹ For example, a recent report found prevailing wage mandates increased the cost of housing construction by 25 percent with no evidence of improved quality. The report used union wages as a proxy for prevailing wage rates. See Elizabeth Roistacher, Jerilyn Perine and Harold Schultz, “Prevailing Wisdom: The Potential Impact of Prevailing Wages on Affordable Housing,” a report on behalf of the Citizens Housing and Planning Council, December 2008.

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The Citizens Budget Commission is a nonprofit, nonpartisan civic organization devoted to influencing constructive change in the finances and services of New York State and City governments.

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1 PREVAILING WAGE IS DIFFERENT FROM MINIMUM WAGE AND LIVING WAGE.

The most common form of government regulation of wages is the requirement that employers abide by a **minimum wage** that is the lowest possible rate of compensation an employee may be paid legally. The minimum wage set by the federal government is currently \$7.25 an hour.² State governments may establish a higher minimum wage, but New York State has not as of this writing. For a forty-hour work week, a minimum wage worker earns about \$15,000 a year.

Critics of the minimum wage assert it is too low to meet basic living expenses. This has led some localities, including New York City, to adopt **living wage** requirements for their own employees and/or contractors. In New York City, the living wage is \$10 an hour plus \$1.50 in health benefits,³ and it applies to home health care, child care and other caregivers who are employed through contracts funded by New York City. Proposals have been made to set living wage requirements for jobs created by publicly subsidized projects, but no such extensions of living wage have been adopted.

Prevailing wage, in contrast, elevates the standard of wages and benefits paid to the level of compensation received by similar workers in a given area. Prevailing wage standards were originally adopted by the federal government and many states to ensure that contractors did not win contracts awarded on the basis of the lowest bid by undercutting wages and compromising safe labor practices. Unlike minimum wage, which is uniform in each state, and living wage, which is set at a standard level for applicable projects or occupations, prevailing wage is set differentially for specific job titles and occupations in each locality.

2 PREVAILING WAGE COVERS PRIVATE EMPLOYEES THAT WORK ON PROJECTS WITH A PUBLIC PURPOSE.

Prevailing wage laws apply to employees of private companies contracted to work on the construction or maintenance of a public work.⁴ In New York State, public works are not statutorily defined, but the State Department of Labor specifies two conditions that must be met for a project to be considered a public work.

First, a public agency must be the contracting entity; this includes construction or building contracts in which a third party acts on behalf of the public entity. For example, prevailing wage requirements currently do not apply to private construction projects that receive financial assistance from industrial development authorities (IDAs); however, prevailing wages must be paid for work performed for IDAs themselves, as IDAs are considered public entities.⁵

² There are some exceptions. For example, the rate may be lower for service employees who work with tips and whose total compensation is expected to exceed \$7.25 when tips are included. See New York State Department of Labor, "Wages and Hours," accessed August 31, 2011, <http://www.labor.ny.gov/workerprotection/laborstandards/faq.shtm#1>.

³ As of July 1, 2006 under New York City Administrative Code Section 6-109 b(1)b.

⁴ Approximately 10,000 *public employees* of the City of New York, the New York City Housing Authority, the New York City Health and Hospitals Corporation and the City University of New York are also covered under prevailing wage statutes.

⁵ For more information, see New York State Department of Labor, "Public Work – General Information: Frequently Asked Questions," accessed August 16, 2011, http://www.labor.ny.gov/workerprotection/publicwork/PW_faq1.shtm#0.

Second, the project’s primary purpose must be to benefit the public. This criterion is often used as a basis for proposing additional extensions of prevailing wage laws to projects that are neither owned nor financed directly by government. For example, private developers of affordable housing utilizing 421-a tax abatements must pay building service employees a prevailing wage for the length of the tax abatement.⁶

Employees covered under prevailing wage law are typically those in building, construction and building service trades. Building service employees include those performing a wide range of duties, such as janitors, guards, cleaners, gardeners, and workers that transport fossil fuels, office equipment or refuse to or from publicly owned facilities. Under New York City’s Administrative Code, building service employees must be paid the greater of prevailing wage or living wage, and the Code pertains to part-time, temporary and seasonal hires, as well as independent contractors. The State statute exempts independent contractors and is silent on part-time employees.

3 PREVAILING WAGE RULES GOVERN MORE THAN WAGES; THEY ALSO SET WORK RULES AND MANDATES FOR OVERTIME PAY AND FRINGE BENEFITS.

The prevailing wage statute applies to work rules and forms of compensation other than wages, such as overtime pay and fringe benefits.

The most restrictive work rules are for hours worked for building and construction trades. Employees are not permitted to work more than 8 hours a day or five days a week, except in cases of “extraordinary emergency.” To obtain emergency status, an application must be made to the State Commissioner of Labor, who can grant an exemption if this restriction does not permit sufficient labor to complete a project expeditiously and failure to complete the project expeditiously may create harm.

In addition, rest periods of 20 minutes or less are considered time worked. Any hours worked in excess of eight hours in a single day are subject to overtime pay, which is determined according to the appropriate prevailing wage schedule. Overtime must be paid for excess hours even if employees are called to work fewer than five days in a given week or do not reach a maximum of 40 hours that week. Employers must apply and be authorized by the State Department of Labor to allow a 10-hour/ 4-day work schedule, and there are few such exceptions. Building service employees must be paid one-and-a-half times the prevailing wage rate for any hours worked above 8 in a day or 40 in a week.

Prevailing wage regulations also require the payment of fringe benefits. These benefits can be paid in either of two ways. The employer can make a supplemental payment according to the hourly rate specified on the prevailing wage schedules, or the contractor can elect to make a contribution to a benefit plan on the employee’s behalf. Employers electing to make contributions to a benefit plan are not restricted in the type of benefit plans or level of benefits offered, but the contribution must be calculated on an hourly basis according to the supplemental payment rate specified on the prevailing wage rate schedule or must be at least equal to this amount when annualized. The supplemental rate typically includes payments for health and pension benefits, but can also cover vacation pay, insurance and apprenticeship training.

⁶ This requirement was enacted in New York State in 2007. Proposals to extend prevailing wage requirements to employees working on the *construction* of 421-a projects have been proposed, but not adopted.

4 DETERMINATION OF PREVAILING WAGES IS NEITHER SIMPLE NOR TRANSPARENT.

Prevailing wages are determined annually as of July 1 by the State Labor Commissioner for the State and local governments and by the Office of the Comptroller in New York City. They also apply to special purpose districts, public authorities and industrial development agencies.⁷

The method for determining the prevailing wage for building and construction trades is specified in Article 8, Section 220 of the New York State Labor Law; in contrast, Article 9, Section 230, which establishes prevailing wage for building service employees, does not specify any criterion. In practice, the Comptroller has applied the same methodology to implement both sections of the statute. The prevailing wage for each title or trade is determined to be the wage negotiated in a given locality between labor organizations and private sector employers that employ at least 30 percent of workers in the same trade, title or occupation. If it is determined that less than 30 percent of workers are covered by one agreement, then the average wage for each trade is calculated and serves as the prevailing wage.

Determination of prevailing wage is not a straight-forward process; its calculation has many variables, including title and occupation, expertise, local jurisdiction, local union market share and type of public project. As a result, each local government has a unique set of prevailing wage schedules that private contractors must use to determine compensation for employees they hire to work on a public project in that jurisdiction. Because titles for each occupation vary to reflect scope of responsibilities and expertise, prevailing wage schedules typically specify dozens of rates of pay for the building, engineering and service jobs involved in the construction or maintenance of a public project. Private contractors must agree to abide by the schedules when they bid on public projects, are responsible for posting these schedules on the work site, must keep detailed time and payroll records, and face stiff penalties for failing to compensate their employees accordingly.

There is no clear public information about how titles are defined within occupations. The State Labor Commissioner and the City Comptroller have discretion to determine the proper classification of workers. Moreover, the State Labor Commissioner and the City Comptroller do not explain which labor agreements serve as the basis for setting prevailing wage rates. Prevailing wage schedules are posted online, but the relevant collective bargaining agreements that set the standard for prevailing wages are not included or referenced in any public documents. The agreement used as the basis for prevailing wage can only be challenged by proving that it covers less than 30 percent of relevant employees in a title, which is difficult when the relevant agreement is not publicized.

Last year, a New York State Supreme Court case underscored the lack of transparency in setting prevailing wage schedules. In this case, the method for establishing the prevailing wage for movers, who are considered building service employees, was successfully challenged. The New York County Supreme Court found that the Comptroller had applied the “30 percent rule” inconsistently, by excluding junior employees from the calculation of the prevailing wage for movers, even though these employees had been counted as part of the union’s total membership. Moreover, the Court ruled the Comptroller cannot simply adopt “the 30 percent rule” specified in statute for construction employees in place of determining the *actual* prevailing wage for building service employees. Writing that “the inquiry... cannot end with the collective bargaining agreement,”⁸ the Court ruled

⁷ For public employees covered under prevailing wage statutes, employees are required to bargain with their employers for wages. If an impasse is reached, the Comptroller is empowered to determine the prevailing wage.

⁸ Metropolitan Movers Association, Inc. v. Liu, 919 N.Y.S.2d 822 (N.Y. 2011).

the Comptroller must use broader survey results to determine the actual wage rate that prevails among building service employees.

5 PREVAILING WAGES ARE TYPICALLY HIGHER THAN AVERAGE WAGES FOR SIMILAR OCCUPATIONS IN THE NEW YORK CITY METRO REGION.

Prevailing wage schedules mandate wages that tend to be higher than average wages paid to private employees doing the same work in the New York City metropolitan area. In the table below, occupational data from the U.S. Bureau of Labor Statistics (BLS) were matched to a sample of occupations and titles listed in the prevailing wage schedules posted online by the City Comptroller’s Office. The hourly wage rate is presented as a range to capture the differentiation between specific titles within that occupation (excluding apprentices and new hires). The occupations chosen are those which could be matched with reasonable confidence to regional BLS data for private industry, but the BLS data are broad enough that they likely capture several titles and job responsibilities for which government would not contract services.

TABLE 1: HOURLY WAGE COMPARISON

Title	New York City Prevailing Wage	NYC Regional Mean Hourly Private Sector Wages	Ratio of Prevailing Wage to Private Sector Wage
Boilermakers	\$47.32 - \$47.98	\$28.72	165 - 167%
Carpenters	\$46.15 - \$46.74	\$26.88 - \$34.88	134 - 172%
Electricians	\$25.30 - \$67.03	\$33.51	75 - 200%
Engineers	\$33.56 - \$77.16	\$38.11 - \$46.15	88 - 167%
Laborers	\$38.20	\$29.71	127%
Office Building Cleaners	\$22.57 - \$24.70	\$16.19 - \$17.56	139 - 141%
Refuse Removers	\$26.70 - \$29.83	\$19.71	135 - 151%
Security Guards	\$12.35 - \$27.50	\$11.36 - 13.09	109 - 210%
Truck Drivers	\$35.06 - \$37.34	\$18.09 - \$24.67	151 - 194%

Note: Does not include prevailing wage rates for apprentices and new hires.

Source: New York City Office of the Comptroller, Bureau of Labor Law, *Labor Law §220 Prevailing Wage Schedule* and *Labor Law §230 Prevailing Wage Schedule*, July 1, 2011; U.S. Bureau of Labor Statistics, *New York-Newark-Bridgeport, NY-NJ-CT-PA, National Compensation Survey*, May 2010.

Using this methodology, prevailing wages are almost universally higher than mean hourly wages in the New York City region. For example, the New York City prevailing wage for boilermakers is about \$47 an hour, 65 – 67 percent higher than the \$28 an hour paid as the mean hourly rate by private employers in the New York City metropolitan area. For some occupations, such as security guards and electricians, prevailing wages can be double the average wage. Since average private sector wages likely include some employees earning prevailing wages, both in New York City and in other adjacent counties, the gap between workers earning prevailing wages and all others is likely even greater.

Two additional points are worth noting. First, prevailing wages can be higher than what state and local governments pay their own employees. Fewer detailed occupational data are available for regional state and local governments, but in two cases where a match could be made using BLS data,

prevailing wages exceeded mean hourly government wages by up to 37 percent for office building cleaners and up to 99 percent for engineers.⁹

Second, New York City’s prevailing wages are not out of line with prevailing wages established under law for federal construction and building services contracts. CBC analysis of wage rates for federally-contracted construction employees working in New York City shows these wages are typically comparable or even slightly higher than New York City-established prevailing wages; however, fringe benefit rates paid under New York City prevailing rate schedules are generally higher, making total compensation greater in most cases examined.¹⁰

6 SUPPLEMENTAL PAY FOR FRINGE BENEFITS MANDATED UNDER PREVAILING WAGE SCHEDULES ADDS AT LEAST 30 PERCENT TO COMPENSATION COSTS.

Prevailing wage requirements add to the cost of doing business more than simple wage comparisons might indicate. The requirement to pay a supplemental rate for fringe benefits adds substantially to the cost of compensation. For the same occupations shown in the first table, the supplemental rate generally adds at least a third to the cost of wages, and in some cases, doubles the level of compensation. And, this does not take into account strict scheduling requirements that dictate overtime payments and other work rules that make the costs even higher.

TABLE 2: PREVAILING WAGE IN NEW YORK CITY

Title	Hourly Wage Rate	Supplemental Rate	Supplemental Rate As a Percent of Wage Rate
Boilermakers	\$47.32 - \$47.98	\$35.28 - \$37.88	75 - 79%
Carpenters	\$46.15 - \$46.74	\$38.50 - \$42.37	83 - 91%
Electricians	\$25.30 - \$67.03	\$16.26 - \$54.41	64 - 81%
Engineers	\$33.56 - \$77.16	\$26.95 - \$28.65	37 - 80%
Laborers	\$38.20	\$30.37	80%
Office Building Cleaners	\$22.57 - \$24.70	\$8.76	35 - 39%
Refuse Removers	\$26.70 - \$29.83	\$10.74	36 - 40%
Security Guards	\$12.35 - \$27.50	\$4.56	17 - 37%
Truck Drivers	\$35.06 - \$37.34	\$31.80 - \$36.93	91 - 99%

Note: Does not include hourly wage rates for new hires and apprentices.

Source: New York City Office of the Comptroller, Bureau of Labor Law, *Labor Law §220 Prevailing Wage Schedule* and *Labor Law §230 Prevailing Wage Schedule*, July 1, 2011.

⁹ CBC analysis of wages that does not include prevailing wage rates for apprentices and new hires. See New York City Office of the Comptroller, Bureau of Labor Law, *Labor Law §220 Prevailing Wage Schedule* and *Labor Law §230 Prevailing Wage Schedule*, July 2011, accessed July 15, 2011 at <http://www.comptroller.nyc.gov/bureaus/bl/schedules.shtml>, and U.S. Bureau of Labor Statistics, *New York–Newark–Bridgeport, NY–NJ–CT–PA National Compensation Survey*, May 2010, accessed July 15, 2011 at <http://www.bls.gov/ncs/ocs/sp/ncbl1614.pdf>.

¹⁰ CBC analysis of wages that does not include prevailing wage rates for apprentices and new hires. See New York City Office of the Comptroller, Bureau of Labor Law, *Labor Law §220 Prevailing Wage Schedule* and *Labor Law §230 Prevailing Wage Schedule*, July 2011, accessed July 15, 2011 at <http://www.comptroller.nyc.gov/bureaus/bl/schedules.shtml>, and U.S. Department of Labor, “Wage Determinations Online – Davis Bacon Act,” September 16, 2011, accessed October 6, 2011 at <http://www.wdol.gov/dba.aspx#0>.

CONCLUSION

Because of the important impact that prevailing wage mandates have on the cost of labor, it is important that their calculation reflect the actual wage that prevails in each area. Efforts should be undertaken to ensure wage surveys are inclusive and widely administered, and the definition of prevailing wage should be broadened to a standard greater than 30 percent. For example, the Davis-Bacon Act, the federal law that covers building and construction trades, bases wage determinations on a majority standard; if more than 50 percent of workers in a specific title are not paid a union rate or the same wage rate, a weighted average rate is employed. The McNamara-O'Hara Service Contract Act also bases wages for building service employees on a 50 percent standard; where this standard is not met, the median wage is typically used.

The State Labor Commissioner and the City Comptroller should take steps to improve transparency in the determination of prevailing wage. They should exercise their discretion to re-examine the criteria for establishment of titles and consider whether changes to prevailing wage schedules could be made within occupations to simplify the schedules and reduce the cost burden. In addition, collective bargaining agreements used to set prevailing wage rates should be identified on the schedules. These and other contractual agreements relevant to the determination of the prevailing wage should also be posted online.