

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) pursuant to Section 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law and in accordance with Section 1043 of the City Charter, HPD is adopting amendments to chapter 50 to title 28 of the Rules of the City of New York to implement changes to the prevailing wage requirements for building service employees in buildings receiving tax benefits under New York State Real Property Tax Law section 421-a (the “421-a Statute”) enacted by Chapter 20 of the Laws of 2015 and Chapter 59 of the Laws of 2017 and to the minimum average hourly wage requirements for construction workers for certain projects in accordance with subdivision 16 of the 421-a Statute.

A notice of proposed rulemaking was published in the City Record on October 15, 2019. A public hearing was held on November 19, 2019.

Statement of Basis and Purpose

Section 421-a of the Real Property Tax Law (“421-a Statute”) provides real property tax exemptions for eligible new multiple dwellings. In New York City, HPD determines eligibility for these exemptions and is responsible for ensuring that applicants for the exemption comply with the exemption’s eligibility requirements, including the requirement that the applicant’s building service employees receive a prevailing wage.

Chapter 20 of the Laws of 2015 amended the 421-a Statute to add enforcement oversight over the building service employees’ prevailing wage requirements by designating enforcement authority to the fiscal officer which, in New York City, is the Comptroller. Chapter 20 of the Laws of 2015 also articulated the fiscal officer’s enforcement powers, which include conducting investigations to determine the prevailing wage for building service employees, holding related hearings, and issuing rules necessary for the proper execution of the duties, responsibilities, and powers conferred upon the fiscal officer by Chapter 20.

Chapter 59 of the Laws of 2017 amended RPTL Section 421-a(16) and provided for Affordable New York Housing Program tax exemption benefits for buildings that commenced construction after December 31, 2015, and on or before June 15, 2022, and who completed construction no later than June 15, 2026. Chapter 59 of the Laws of 2017 requires compliance with the prevailing wage requirements for building service workers and provides enforcement authority to the New York City Comptroller. RPTL Section 421-a(16) provides that eligible multiple dwellings containing less than thirty dwelling units are exempt from the requirement. For an eligible multiple dwelling receiving benefits pursuant to RPTL Section 421-a(16) to meet the affordability exemption from the building service workers prevailing wage requirements, all of the dwelling units must be affordable housing units and at least 50%, upon initial rental and subsequent rentals following a vacancy, must be affordable to and restricted to occupancy by individuals or families at or below 125% of Area Median Income.

Chapter 59 of the Laws of 2017 also provided that in addition to the other requirements provided in subdivision 16 of the 421-a Statute, rental projects with 300 or more dwelling units that are

located in portions of Manhattan, Queens and Brooklyn must pay construction workers a minimum average hourly wage. The Comptroller also was given enforcement authority with respect to these minimum average hourly wage requirements for construction workers.

Chapter 50 of Title 28 of the Rules of the City of New York governs building service worker prevailing wage requirements and construction workers minimum average hourly wage requirements in certain buildings receiving benefits pursuant to the 421-a Statute.

HPD's rule amendments authorize the imposition of civil penalties for violations of the prevailing wage and minimum average hourly wage requirements. The civil penalty cannot be more than 25% of either (a) the prevailing wage underpayment, or (b) the differential between the wages set forth in the contractor's certified payroll report and the actual wages paid. The civil penalty shall be assessed based upon such factors as size and good faith of applicant, contractor or subcontractor, as relevant, the gravity of the violation, the violation history and the failure to comply with bookkeeping and other non-wage requirements.

The rule amendments also amend the definition of "Owner" in the rules to track Labor Law Article 9 and ensure that the definition covers any entity that is employing building service workers for work that extends beyond such entity's individual residential or commercial unit. Finally, the rule amendments make some technical amendments to Chapter 50.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter and section 421-a of the Real Property Tax Law.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The definitions of "Comptroller Schedule", "Owner" and "Prevailing Wage Requirement" in section 50-01 of title 28 of the rules of the city of New York are amended to read as follows:

Comptroller Schedule. "Comptroller Schedule" shall mean the annual [Labor Law Section 230 Prevailing Wage Schedules for]Building Service Employee[s] Prevailing Wage Schedule published by the Comptroller that [are]is in effect at the time the relevant Building Service Employee performs the work and that is published at www.comptroller.nyc.gov/wages.

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.

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.

§ 2. Section 50-04 of chapter 50 of title 28 of the rules of the city of New York is amended to read as follows:

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.

§ 3. Subdivision a of section 50-05 of chapter 50 of title 28 of the rules of the city of New York is amended to read as follows:

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[and], interest and civil penalty to the Comptroller.

§ 4. Subdivision e of section 50-09 of chapter 50 of title 28 of the rules of the city of New York is amended to read as follows:

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.

Commissioner Louise Carroll
January 24, 2020