

Prevailing Wage Law FAQ:

Prevailing and Protected Wage for Building Service Employees

The New York City Council recently passed Local Law 212 of 2019. The law expands the Prevailing Wage Law requirements for building service employees to certain affordable housing residential projects receiving City financial assistance. See Section 6-130 of the New York City Administrative Code (Prevailing Wage for Building Service Employees in City Leased or Financially Assisted Facilities).

General

1. What is the universe of impacted buildings and projects?

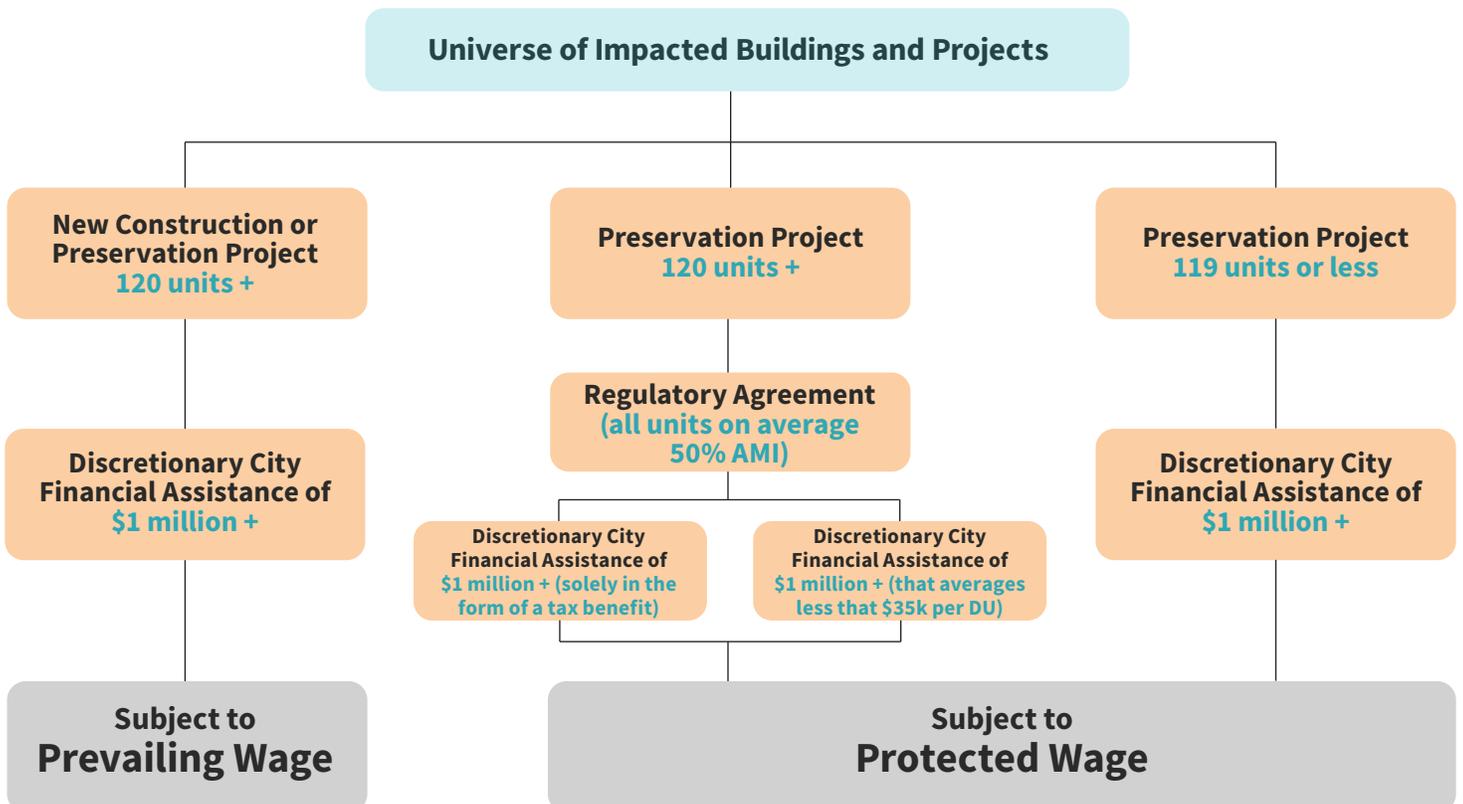
Prevailing Wage Requirements: Beginning in April 2, 2020, developers or owners of new construction or preservation residential projects with 120 or more residential units in one or more buildings receiving discretionary City financial assistance of \$1 million or more will be required to pay all building service employees no less than the prevailing wage.

Protected Wage Requirements: Beginning in April 2, 2020, developers or owners of preservation projects receiving discretionary City financial assistance of \$1 million or more will be required to pay all building service employees no less than the protected wage.

A preservation project for the purposes of the protected wage requirement is defined as:

1. a project undertaken by the City to preserve no more than 119 residential units in one or more buildings and receiving discretionary City financial assistance of \$1 million or more; or
2. a project undertaken by the City to preserve 120 or more residential units in one or more buildings that is subject to a regulatory agreement requiring affordability of all residential units for households earning on average of up to 50% AMI and receiving City discretionary financial assistance of \$1 million or more that is solely in the form of a tax benefit; or
3. a project undertaken by the City to preserve 120 or more residential units in one or more buildings that is subject to a regulatory agreement requiring affordability of all residential units for households earning on average of up to 50% AMI and that averages less than \$35k per DU in discretionary City financial assistance of \$1 million or more.

The requirements of this law do not apply to converted public housing building service workers and supportive housing projects as defined by the law.



2. What is a covered developer?

A covered developer means any person receiving discretionary City financial assistance of \$1 million or more in relation to a City development project, or any assignee or successor in interest of real property that qualifies as a City development project.

A covered developer does not include a business improvement district, a small business, or an otherwise covered developer whose industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

3. What is a protected developer?

A protected developer means any person receiving discretionary City financial assistance of \$1 or more for a preservation project except a business improvement district.

4. What does financial assistance mean?

Financial assistance refers only to assistance that is negotiated or awarded by the City on a discretionary basis that is provided to a covered developer or a protected developer to support housing and economic development projects. This can include, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions, tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements related to real property that, under ordinary circumstances the City would not pay for. Financial Assistance refers to assistance provided either directly by the City or indirectly by a City economic development entity and that is made available in whole or in part by the City.

When a covered developer or protected developer enters into a written agreement with the City and/or City economic development entity and receives financial assistance that is expected to have a present financial value of \$1 million or more, it is covered by this law.

Financial assistance does not include as-of-right assistance, tax abatements, or benefits.

5. Is New York City Housing Development Corporation (HDC) financing classified as City financial assistance for the purpose of the \$1 million threshold?

HDC subsidy does not count as financial assistance under the law.

6. When does the law go into effect?

The law goes into effect on April 2, 2020.

7. What are the exemptions to this law?

Supportive housing projects are exempt from the requirements of this law. Supportive housing project is defined as a project where the developer has entered into a regulatory agreement that requires:

1. at least 50% of the residential units to be reserved for homeless, disabled individuals or homeless families with a disabled head-of-household; and
2. the provision of on-site supportive services to residents of at least 50% of the residential units; and
3. the remaining 50% of the residential units in a supportive housing project must be rented to households earning on average up to 80% AMI.

The requirements of the law do not apply to converted public housing building service workers. Converted public housing building service worker means any building service worker employed at a converted public housing building that is a beneficiary of federal assistance under the United States Housing Act of 1937, as amended, at the time such worker performs such building service work.

8. Who qualifies as a building service employee?

A Building Service Employee means any person, the majority of whose employment consists of performing building service work including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

9. What are prevailing wages and how are they determined?

Prevailing wage means the rate of wage and supplemental benefits paid in the locality to workers in the same trade or occupation and annually determined by the New York City Comptroller's Office in accordance with the provisions of Section 234 of the New York State Labor Law. The [Prevailing Wage Schedule](#) is issued annually for building service employees by the New York City Comptroller's Office.

10. What are the protected wages and how are they determined?

Protected wage means the rate of wages and cost of benefits paid to a building service employee in a preservation project on the date that the financial assistance for such a project is received plus an annual increase to account for any change in the cost of living and in the cost of providing benefits.

The rate of the annual increase will be determined by a standard established by City agency rulemaking.

Process

11. How long do the requirements remain in place?

The requirements of the law shall apply for the term of the financial assistance, for ten (10) years from the date that the financially assisted project opens, or for the duration of any written agreement between the City and a covered developer or protected developer providing for financial assistance, whichever is longer.

12. What are the administrative requirements in addition to payment of the required prevailing or protected wages?

The owner and/or developer will have to comply with the certification, record keeping, and notice requirements set forth in Section 6-130(c)(2), (3), and (4) of the New York City Administrative Code. These requirements include providing annual certifications to the City and the Comptroller that building service employees will be and/or have been paid the prevailing wage or protected wage; maintaining original payroll records for each building service employee which must be retained for at least six years after the building service work is performed; and posting (and providing to each building service employee) a notice prepared by the Comptroller's office at the covered project.

13. Does this apply to all building service employees on site?

The owner and/or developer will have to ensure that all building service employees performing building service work in connection with the covered projects are paid prevailing wages or protected wages as applicable.

14. How will these requirements affect building service employees in existing buildings?

The existing building service employees in existing buildings subject to the requirements will need to be paid at least the prevailing wage as established by the New York City Comptroller's Office or the protected wage as applicable.

15. What if a developer or owner already has an agreement with unions representing building service employees?

Building service employees subject to the requirements will need to be paid at least the prevailing wage as established by the New York City Comptroller's Office or the protected wage as applicable.

16. What if an owner or developer employs the same building service worker at more than one building, one or more covered by these requirements and one or more not?

The employee must be paid prevailing wage or protected wage, as applicable, only for time working at the projects covered under this law.

City Initiated Rezoning Areas

17. Is the new prevailing wage law applicable to projects in City initiated rezoning areas?

This new prevailing wage law is applicable in City initiated rezoning areas that meet the criteria set forth in the law. In addition, it remains the City's policy to require that, in City initiated rezoning areas, prevailing wage must be paid to all building service employees in new or existing buildings with at least 30 units of residential housing that receive discretionary City financial assistance of \$1 million or more with certain exemptions for preservation projects.