

NYC Expands Living Wage Law

On September 30, New York City Mayor Bill de Blasio signed an executive order raising the city's minimum wage and benefit rate for hourly employees of certain city contractors and other employers that receive city subsidies of \$1 million or more, and expanding coverage of the living wage law to additional employers. The order requires covered entities to pay an increased living wage of \$13.13 per hour for employees who do not receive health benefits and \$11.50 for employees who do. Employers will have to factor the new requirements into their business plans and overall compliance strategies.

Background

In 2012, the New York City Council passed the [Fair Wages for New Yorkers Act](#) (living wage law) over former Mayor Michael Bloomberg's veto. The law amended the city's administrative code to require certain entities that receive at least \$1 million in financial assistance from the city to pay their employees a "living wage" (i.e., the wage and benefit rate required to meet minimum standards of living). The requirement applied to approximately 1,200 jobs citywide. A legal challenge by Mayor Bloomberg initially blocked the living wage provisions from taking effect, but Mayor Bill de Blasio's subsequent withdrawal of the lawsuit paved the way for implementation.

Expanding the Living Wage

On September 30, 2014, Mayor Bill de Blasio signed [Executive Order No. 7](#) (EO 7), the "Living Wage for City Economic Development Projects." EO 7 substantially expands the reach of the living wage law, requiring additional entities that contract with, receive subsidies from, or occupy space in commercial properties subsidized by the city to pay their employees no less than the wage set by the city. The city estimates that EO 7 will broaden coverage of the living wage provisions to 70% of all jobs at firms supported by city agencies and extend living wage jobs to an estimated 18,000 additional workers over the next five years.

Projected Wage Increase

NYC **projects** that the annual earnings of the lowest-paid workers covered by EO 7 will increase from \$16,640 to \$27,310.

Increased Wage Rates

Under EO 7, covered employers are required to pay full-time, part-time, temporary, and seasonal employees (including independent contractors and contingent workers) who do not receive health benefits a living wage of \$13.13 per hour. Employers that provide health benefits are required to pay employees \$11.50 per hour. The living

wage will be indexed for inflation and adjusted annually. Each January, the Department of Consumer Affairs (DCA) will announce the adjusted rates that will take effect on April 1 of that year.

Expanded Coverage

Along with increasing wage rates, EO 7 also increases the number of employers subject to the living wage requirement by:

- Expanding coverage to tenants and contractors in subsidized buildings
- Enlarging the definition of subsidy recipient to include purchasers, assignees, and transferees of real property
- Narrowing the small business exemption
- Eliminating exemptions for independent contractors and for future development at Hudson Yards

Important exemptions continue to exist for manufacturers; small businesses; not-for-profit organizations; and entities operating in city-backed housing developments with more than 75% affordable residential units.

Tenants and Contractors in Subsidized Buildings. In a significant expansion, EO 7 extends the living wage requirement to entities that do not receive direct financial assistance from the city, but simply occupy space or perform services in subsidized commercial properties. Commercial tenants, contractors, and concessionaires in properties that were improved or developed with \$1 million or more in financial assistance from the city are among the additional employers covered by EO 7, as are contractors that provide services at these sites for a period of more than 90 days (including temporary services or staffing agencies, food service contractors, and other on-site contractors).

Purchasers, Assignees, and Transferees as Subsidy Recipients. The living wage law covered only employers that were “subsidy recipients” — direct recipients of discretionary financial assistance negotiated or awarded by the city or by a city economic development entity. EO 7 expands this definition to include assignees or purchasers of property improved or developed with financial assistance from the city. City agencies and city economic development entities are excepted.

Comment. Neither the living wage law nor EO7 applies to as-of-right assistance, tax abatements, or benefits, such as those available under the Industrial and Commercial Abatement program, the J-51 Program, or other similar programs.

Small Businesses. The living wage law exempted businesses with less than \$5 million in annual gross revenues from the living wage mandate, but EO 7 substantially narrows the exemption. Under the new law, the small business exemption is available only to employers with annual gross revenues of less than \$3 million.

Independent Contractors and Hudson Yards. In a significant expansion, EO 7 eliminates exemptions from the living wage requirement for construction contractors and building services contractors (such as maintenance workers, security guards, and porters) performing work for covered entities that receive at least \$1 million in

2019 Living Wage

The NYC living wage is expected to reach \$15.22 by 2019 for employees without benefits.

Potential Impact

Restaurants, bars, and retailers that occupy subsidized commercial spaces may be especially impacted by this provision since they generally rely on large numbers of lower-wage workers.

financial assistance from the city. Also eliminated is the exemption for entities that occupy or operate at the Hudson Yards project on Manhattan's West Side and their contractors and subcontractors that provide on-site services. With coverage expanded to property owners and developers at Hudson Yards as well as to their tenants and contractors, the number of jobs covered by the living wage provisions is expected to increase substantially as development continues.

Duration of the Living Wage Requirement

Each city agency and the city's economic development entity is charged with implementing the new requirements, and making sure that covered employers are paying the living wage. Under EO 7, covered employers will be obligated to pay their employees the living wage for the longer of the term of the financial assistance from the city or for 10 years from the later of the date the project begins or operations begin.

Comment. Because the requirement to pay a living wage may extend beyond the subsidy period, employers will want to weigh the potentially shorter-term value of financial assistance from the city against any longer-term obligation to pay higher wages than otherwise may be required.

Enforcement

While the DCA is charged with enforcing EO 7, the Office of the Comptroller has responsibility for monitoring compliance and conducting investigations. While the living wage law provided employees with a private right of action for its violation, it is unclear whether employees have such a right for violations of EO 7. Further guidance is needed.

Effective Date

Effective September 30, 2014, EO 7 requires the city and city economic development entities to incorporate its provisions into contracts and agreements that award financial assistance. While the EO expressly prohibits its application "in a manner that will interfere with contracts or agreements entered into by the City or any City Economic Development Entity" prior to the effective date, it is not entirely clear whether the order applies to projects that receive financial assistance from pre-existing awards on a continuing or installment basis.

In Closing

EO 7 increases the wage floor and corresponding labor costs for a broad range of NYC businesses. Along with certain city contractors and subsidized real estate projects, commercial tenants and sub-tenants in buildings that receive \$1 million or more in financial assistance from the city will also be subject to minimum wage increases unless they qualify for one of the limited exemptions from NYC's living wage law. Because Mayor de Blasio has indicated that additional amendments to the city's wage laws will be coming, employers should continue to monitor any changes proposed by the current administration.

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