

# Prevailing News - NYC

A Publication of the Bureau of Labor Law  
about Prevailing Wage and Living Wage Enforcement



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## From the Desk of Comptroller William C. Thompson, Jr.

Among the workers who are most vulnerable to exploitation by dishonest contractors are newly arrived immigrants. Many of these workers are not proficient in English or aware of their rights to a fair wage under the labor law. Often, these immigrants are concerned that they will lose their jobs or are at risk of deportation if they complain about unfair treatment. This problem is particularly acute because nearly half of the workers in New York City's labor force are immigrants.

Earlier this year, I wrote to hundreds of community, immigrant and advocacy groups to ask for their help in educating immigrant workers who are employed by companies that hold New York City construction contracts, building service contracts or certain other municipal service contracts. A recent court decision affirmed that undocumented workers can pursue prevailing wage claims in New York and this month I am sending letters to leaders of churches, temples and mosques, explaining that workers may submit prevailing wage and living wage complaints to my Bureau of Labor Law, regardless of their immigration status. My goal is to ensure that both foreign and native-born employees receive lawful wages and benefits when they work on government projects.

Our immigrant outreach effort includes visits to associations in immigrant neighborhoods throughout the City. Last month, for example, I spoke about prevailing wage enforcement at an "Immigrants Rights Day" forum organized by the National Ethnic Coalition of Organizations and the Emerald Isle Immigration Center. In addition, our Labor Law staff joined organizers from the Laborers and Carpenters Unions at a series of presentations to educate hundreds of Spanish-speaking and Polish-speaking adult students attending English as a Second Language classes about their rights under the prevailing and living wage laws. These classes, held in Sunset Park, were sponsored by the Fifth Avenue Committee, a well-respected Brooklyn neighborhood group.

I am also proud to announce that as a result of her tireless advocacy on behalf of immigrant workers, Michelle Centeno of my staff recently received a prestigious community service educational award from the National Puerto Rican Day Parade Committee. Michelle is the Director of Outreach in the Bureau of Labor Law.

We welcome the opportunity to work with you to pursue creative new ways to protect the rights of immigrants and all other workers.

## COURT ALLOWS UNDOCUMENTED WORKERS TO PURSUE PREVAILING WAGE CLAIMS

A New York State Supreme Court judge has ruled that undocumented workers may, independent of their immigration status, proceed with lawsuits to recover underpayments of prevailing wages from companies holding New York City construction contracts.

Although the defendants in this case argued that the federal Immigration Reform and Control Act bars immigrants who obtain employment with false documents from pursuing prevailing wage claims in court, Justice Karla



WILLIAM C. THOMPSON, JR.  
COMPTROLLER  
CITY OF NEW YORK



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### UNDOCUMENTED WORKERS MAY PURSUE PREVAILING WAGE CLAIMS

Moskowitz held that *“Undocumented workers, no matter what kind of documents they proffered or did not proffer at the time of employment, may still collect the prevailing wage under New York State Labor Law.”*

### IMMIGRANT FAMILY WINS \$80K IN BACK PAY FROM BELLEVUE CONTRACTOR

In May of 2007, the Bureau of Labor Law entered into a settlement with Rothstein & Hoffman, an electrical contractor holding construction contracts with the New York City Health & Hospitals Corporation. The company agreed to pay \$80,000 in back wages, interest and a civil penalty to four Asian immigrant electrical workers - a father and his three sons - who had filed complaints with the Bureau.

The case began with allegations that Rothstein & Hoffman was underpaying its workers at Bellevue Hospital. Representatives of IBEW Local 3 and the Carpenters Labor Management Corporation asked the Bureau of Labor Law to investigate.

The violation was classified as “willful” and, under the labor law, if Rothstein and Hoffman receives a second such violation within six years, the firm will be barred from government work for a period of five years.

### LABOR LAW TACKLES THE TOUGHEST CASES

Labor Law investigators, auditors and attorneys have recently resolved several challenging cases.

Comptroller Thompson debarred Uddin USA Corp. from performing City and State contracts for five years after the Office of Administrative Trials & Hearings found that the contractor deliberately falsified certified payroll records and underpaid four of its construction workers more than \$467,000 in wages and benefits. These employees were paid an average of \$15 an hour for demolition and carpentry work instead of the \$38 to \$50 per hour in wages and benefits they were legally entitled to. The company had contracts with the New York City Department of Design & Construction (DDC); Uddin is now out of business.

The Bureau also completed several complex cases with Apple Builders & Renovators, Inc. This firm had contracts with DDC, the School Construction Authority and the Metropolitan Transit Authority, and each contract was the subject of a separate labor law investigation. The Bureau agreed to a joint settlement with Apple covering all three contracts. Apple accepted a finding of a willful violation and agreed to pay over \$330,000 to the Comptroller for the underpayment of wages, interest and penalty; eighteen Apple employees will receive back wages with interest because of this settlement.



APPLE ACCEPTED A WILLFUL VIOLATION AND AGREED TO PAY OVER \$330,000 FOR THE UNDERPAYMENT OF WAGES, INTEREST AND PENALTY

### COMPTROLLER BLOCKS FDNY CONTRACT

Comptroller Thompson’s Office of Contract Administration recently raised objections to a proposed one-year extension of a contract with Bridgeworks of Greater New York (Bridgeworks), a company working for the City’s Fire Department (FDNY).

FDNY officials sought to add an additional year to a five-year, \$537,246 contract with Bridgeworks to build temporary sidewalk bridges outside of fire stations. However, City investigators found that an affiliated firm, PSG Construction, had submitted falsified payroll records to the Department of Housing Preservation & Development to cover up the company’s non-compliance with the labor law. The proposed contract extension has now been cancelled.

## COMPTROLLER REMINDS WORKERS ABOUT THEIR RIGHTS TO RECEIVE A LIVING WAGE

Comptroller Thompson is reaching out to employees in a variety of occupations to encourage reporting instances where workers are not receiving their legal wages.

Comptroller Thompson said: "Currently, most of the workers in these titles, which are outlined in the City statute, must receive \$10 per hour at a minimum, plus \$1.50 in health

benefits per hour. Some are entitled to a higher wage pursuant to Section 230 of the New York State Labor Law."

Comptroller Thompson is distributing a bulletin that identifies the wages and benefits that must be paid under the City's living wage law to home attendants, day care workers, Head Start employees, and workers who provide services to persons with cerebral palsy. The law also covers government building service employees, security guards, temporary clerical workers, and food service workers employed by municipal contractors, all of whom are entitled to the living wage or the local prevailing wage, whichever is greater.

WHAT YOU NEED TO KNOW ABOUT THE LIVING WAGE LAW!

Workers employed by NYC government contractors in certain jobs are entitled to a Living Wage and Health Benefits. For example\*:

• Building Porters/Cleaners: \$25.41-\$26.66/hour	• Home Attendants: \$11.50/hour
• Cerebral Palsy Workers: \$11.50/hour	• Security Guards (armed): \$19.24/hour
• Day Care Workers: \$11.50/hour	• Security Guards (unarmed): \$11.50/hour
• Food Service Employees: \$14.33-\$26.85/hour	• Temporary Office/Clerical Workers: \$11.50-\$19.45/hour
• Head Start Employees: \$11.50/hour	• Window Cleaners: \$31.61/hour

\*These rates, which include wages and health benefits, may vary and are subject to change. These rates apply as of July 1, 2007; most are valid through June 30, 2008.

IT'S THE LAW IN NEW YORK CITY!

If you work in one of these jobs for a government contractor and you believe your employer is not complying with the law, contact:

New York City Comptroller William C. Thompson, Jr.'s  
Bureau of Labor Law at (212) 669-4443

All calls will remain confidential.

Or go to [www.comptroller.nyc.gov](http://www.comptroller.nyc.gov)  
and click on Labor Law for other job titles, complaint forms and more information.

We can help get the back wages owed to you.  
Contact us today!

The new bulletin - which is in English, Spanish and French Creole - is part of Comptroller Thompson's efforts to ensure that workers are properly compensated. Labor law information is also available in Chinese, Polish, Urdu, Russian, Croatian and Portuguese.

Comptroller Thompson encourages workers to contact his Bureau of Labor Law at (212) 669-4443 to report instances where employers are

failing to comply with the living wage or prevailing wage law.

LABOR LAW INFORMATION IS AVAILABLE IN ENGLISH, SPANISH, FRENCH-CREOLE, CHINESE, POLISH, URDU, RUSSIAN, CROATIAN AND PORTUGUESE

## A PREVAILING PAY HIKE FOR CITY HIGHWAY WORKERS

The City of New York is required by Labor Law 220 to pay prevailing wages to its own employees in certain job titles who perform covered work. Civil service unions that represent covered workers can petition the Comptroller to determine the prevailing rate for their job titles.

Members of District Council 37's Local 376 began receiving back pay retroactive to July of 2002 after settling with the City of New York last month. This settlement was reached one year after Comptroller Thompson's Bureau of Labor Law issued a determination stating that Highway Repairers and Construction Laborers in this union, who work for the Department of Transportation and the Department of Environmental Protection, were paid \$8-\$10 less per hour than their

counterparts who are employed in the private sector.

Supervisor Highway Repairers should also soon receive pay increases and back wages retroactive to 2002. After a comprehensive investigation, Comptroller Thompson issued a determination in 2005 that the hourly pay of these members of DC 37's Local 1157 is significantly less than workers in the private sector who perform the same jobs. The Office of Labor Relations of the City of New York (OLR) challenged this determination, but it was upheld by a judge in the Office of Administrative Trials & Hearings. OLR later filed an unsuccessful appeal of this decision to the Appellate Division of the State Supreme Court, which affirmed the OATH ruling.

## LABOR LAW REFORMS PASS THE LEGISLATURE

Several proposals to strengthen prevailing wage enforcement passed the State Senate and Assembly this year. Governor Spitzer will soon decide whether to approve or veto these bills.

The New York State building trades strongly supported legislation that would make certain prevailing wage violations a felony rather than a misdemeanor. The bill was drafted primarily by Suffolk County District Attorney Thomas Spoda, who has been very active prosecuting prevailing wage cases.

A second bill would clarify that contracts for public work entered into by a third party are subject to prevailing wage requirements. The legislation would close a significant loophole in the law created by the Pyramid case, in which the New York State Appellate Division ruled that the Department of Labor was precluded from enforcing the prevailing wage law because a private developer, not a government agency, was the party to the public works contract. The New York State

Chapter of the International Union of Operating Engineers has supported this legislation for nearly a decade.

Another bill, promoted by the New York State Laborers, and awaiting delivery to the Governor, would require public works contractors to simultaneously distribute notices of current prevailing wage rates along with employee pay checks.

Other proposals to enhance the labor law did not fare as well in Albany. One bill, which passed only the Assembly, would have allowed the Bureau of Labor Law and the Department of Labor to debar contractors who repeatedly and willfully hire subcontractors that ignore prevailing wage requirements. Another unsuccessful bill would have required that all subcontracts be in writing.

Our office will keep you informed as to whether the Governor signs or vetoes the bills approved by the Legislature.

IF SIGNED BY  
GOVERNOR SPITZER,  
THE LEGISLATION WILL  
MAKE CERTAIN  
PREVAILING WAGE  
VIOLATIONS A FELONY  
RATHER THAN A  
MISDEMEANOR

## WORKERS' COMPENSATION FRAUD FIGHT

Earlier this year, Governor Spitzer and legislative leaders signed into law steps to overhaul the State workers' compensation system by increasing worker benefits and permitting the aggressive prosecution of companies that cheat the system. Studies have shown that many employers who disregard labor laws also fail to pay worker's compensation premiums for all their employees.

Under the new law, State officials will, for the first time, be authorized to stop a

company from working on a construction site if the firm has failed to purchase workers' compensation insurance for all its workers. Employers who under-report the size of their work force to reduce insurance premiums can be banned from doing business with the government. Companies can be charged with a felony if they intentionally misclassify their employees as independent contractors.

The Governor indicated that these antifraud measures will yield substantial savings for the State and help pay for the benefit increases.

**Comptroller William C. Thompson, Jr.**

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