

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing Building Service Workers Prevailing Wage Requirements and Construction Workers Minimum Average Hourly Wage Requirements in Certain Buildings Receiving RPTL Section 421-a Benefits

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Section 1802 of the New York City Charter and by New York State Real Property Tax Law Section 421-a(the "421-a Statute"), and in accordance with Section 1043 of the New York City Charter, the Department of Housing Preservation and Development 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 the 421-a Statute, which changes were enacted by Chapter 20 of the Laws of 2015 and Chapter 59 of the Laws of 2017. HPD's rule amendments extend chapter 50 to include the Comptroller's enforcement authority under subdivision 16 of the 421-a Statute and add requirements relating to the Comptroller's enforcement of minimum average hourly wage requirements for construction workers for certain projects.

A notice of proposed rulemaking was published in the City Record on June 13, 2017. A public hearing was held on July 17, 2017.

Statement of Basis and Purpose

Section 421-a of the Real Property Tax Law (RPTL) 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, which took effect on October 23, 2016, addresses the prevailing wage requirement in buildings receiving this tax exemption benefit that commenced construction on or before December 31, 2015.

HPD's rule amendments extend Chapter 50 of the Rules of the City of New York to include rules relating to the Comptroller's enforcement authority under RPTL Section 421-a(16)(h). The rule amendments also add the requirements for the Comptroller's enforcement of the minimum average hourly wage requirement for construction workers in the relevant projects. The Comptroller's hearing practice and procedure are covered by existing rules codified at Chapter 2 of Title 44 of the Rules of the City of New York.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter and RPTL Section 421-a.

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 title of Chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

Chapter 50

Building Service Employees Prevailing Wage Requirements and Construction Workers
Minimum Average Hourly Wage Requirements in Certain Buildings Receiving Benefits
Pursuant to Real Property Tax Law Section 421-a

Section 2. The first paragraph of Section 50-01 of Chapter 50 of Title 28 of the Rules of the City of New York and three definitions therein are amended, and new definitions of "Minimum Average Hourly Wage Act" and "New 421-a Act" are added in alphabetical order, to read as follows:

Definitions: As used in this chapter, the following terms shall have the following meanings. Capitalized terms that are not specifically defined in this chapter shall have the meanings set forth in the Act or in the Minimum Average Hourly Wage Act, as relevant.

Final Certificate of Eligibility. "Final Certificate of Eligibility" shall mean either (a) the document issued by the Agency in accordance with chapter six of this title that provides for Post-Construction Benefits, or (b) the document issued by the Agency in accordance with Chapter 51 of this title that provides for Affordable New York Housing Program Benefits.

Minimum Average Hourly Wage Act. “Minimum Average Hourly Wage Act” shall mean subdivision 16(c) of Section 421-a of the Real Property Tax Law.

New 421-a Act. “New 421-a Act” shall mean paragraph (h) of subdivision 16 of Section 421-a of the Real Property Tax Law.

Order. “Order” shall mean an order issued by the Agency pursuant to [subdivision] paragraph (f) of the Act or subparagraph (iv) of the New 421-a Act, respectively, that either (a) adopts, in whole or in part, or rejects a Report and Recommendation, or (b) approves any Stipulation of Settlement between the Comptroller and the Applicant.

Prevailing Wage Requirement. “Prevailing Wage Requirement” shall mean the requirements under the Act or the New 421-a Act, respectively, and this chapter that are applicable to any Multiple Dwelling whose construction began on or after December 28, 2007, except as otherwise provided in paragraph (e) of the Act or subparagraph (v) of the New 421-a Act, as applicable, that all Building Service Employees receive the Prevailing Wage for the duration of the applicable Benefits period.

Section 3. Subdivision (c) of Section 50-04 of Chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

c. An Owner shall be jointly liable for any violation of the Act or the New 421-a Act, as applicable, at the property receiving Benefits without regard to whether the Building Service Employees were directly employed by such Owner.

Section 4. Section 50-06 of Chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 50-06. Agency [Certification] Determination of Prevailing Wage Exemption. An Applicant who requests a [certification] determination of exemption from the Prevailing Wage Requirement pursuant to [paragraph (e) of] the Act or the New 421-a Act, as applicable, must submit all of the documentation necessary to prove that:

(a) with respect to a multiple dwelling that is not receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, at least fifty percent of the dwelling units in such Applicant’s building are 125% Units, including, but not limited to, [(a)] (i) with respect to a multiple dwelling owned and operated as a rental, the initial rents for such 125% Units, the income certifications for the initial occupants of such 125% Units, and proof that the building is required to maintain such 125% Units during the entire period of Post-Construction Benefits, and, [(b)] (ii) with respect to 125% Units in a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the initial unit sale prices and the income certifications for all of the initial purchasers of such 125% Units; or (b) with respect to an Eligible Multiple Dwelling that is receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, all of the dwelling units in such Eligible Multiple Dwelling are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Restriction Period or the Extended Restriction Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Eligible Multiple Dwelling is required to

maintain such Affordable Housing Units and 125% Units during the entire Restriction Period or Extended Restriction Period, as applicable.

Section 5. Chapter 50 of Title 28 of the Rules of the City of New York is amended by adding a new Section 50-07 and a new Section 50-08 to read, respectively, as follows:

§ 50-07. Contractor Certified Payroll Report. a. Eligible Multiple Dwellings that are required to submit a Contractor Certified Payroll Report pursuant to paragraph (vi) of the Minimum Average Hourly Wage Act shall use the form provided on the Comptroller's website at www.comptroller.nyc.gov/prevailingwage, and shall identify all Construction Workers employed by the contractor or subcontractor and set forth the dates for all hours worked, the hourly wage and benefit rates, and the weekly gross and net pay amounts for each such Construction Worker. The Contractor Certified Payroll Report shall be accompanied by employee daily sign-in logs in the form provided on the Comptroller's website at www.comptroller.nyc.gov/prevailingwage, and shall identify all Construction Workers employed by the contractor or subcontractor, set forth the daily start and end times of work for each such Construction Worker, and include each such Construction Worker's original signature.

b. Notwithstanding anything to the contrary contained in subdivision a of this section, the requirement for employee daily sign-in logs shall be waived for any Construction Work that took place on any days prior to the effective date of this subdivision.

§ 50-08. Failure to Submit Required Reports, Failure to Submit Accurate Reports or Failure to Pay Minimum Average Hourly Wages in Accordance with the Minimum Average Hourly Wage Act.

a. The Comptroller shall only approve a plan submitted by the Third Party Fund Administrator pursuant to paragraph (vii) of the Minimum Average Hourly Wage Act if distribution of the deficiency is limited to all Construction Workers whose wages equal less than the minimum average hourly wage applicable to such Eligible Site.

b. In the event that the Third Party Fund Administrator cannot distribute funds to any Construction Workers within one year of receiving the Comptroller's approval of such Third Party Fund Administrator's plan, the Third Party Fund Administrator shall pay the unclaimed funds to the Comptroller and the Comptroller shall hold such funds for such Construction Workers until they claim their awards.

c. In the event that any contractor or subcontractor does not submit the Contractor Certified Payroll Report, or if it appears to the Comptroller that any Contractor Certified Payroll Report is inaccurate, the Comptroller shall conduct an investigation to determine: (i) the actual wages paid to all Construction Workers employed by the contractor or subcontractor that did not submit the Contractor Certified Payroll Report or that submitted an inaccurate Contractor Certified Payroll Report, and, if relevant, (ii) the difference between the actual wages paid and the wages set forth in the inaccurate Contractor Certified Payroll Report.

d. The Comptroller shall provide the Independent Monitor with a statement of actual wages paid to all Construction Workers employed by a contractor or subcontractor that

did not submit the Contractor Certified Payroll Report, and the Independent Monitor shall use such statement to complete the Project-Wide Certified Payroll Report.

e. A contractor or subcontractor who submits an inaccurate Contractor Certified Payroll Report shall be 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.

Commissioner Maria Torres-Springer
September 26, 2017