

New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to add rules to implement new legislation regarding construction labor providers.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on March 22, 2022. A public hearing was held on April 21, 2022. The Department of Consumer and Worker Protection (“DCWP” or “Department”) received no comments regarding the rule.

Statement of Basis and Purpose of Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is adding rules to implement new legislation regarding construction labor providers. Local Law 150 of 2021 (“LL 150”) added a new licensing requirement for all construction labor providers, which entails a \$200 application or renewal fee. LL 150 also requires that construction labor providers provide certain notices to employees and maintain certain records, among other requirements.

Construction labor providers are businesses that employ and supply workers to clients to perform construction work or manual labor on New York City worksites. These new rules generally clarify obligations of a construction labor provider under the new law.

Specifically, these new rules would:

- Clarify the license application requirements for construction labor providers;
- Clarify the requirements for notices that construction labor providers must provide to covered construction workers informing them of their legal rights, required certifications and training, and information about the job to which they are assigned;
- Supplement recordkeeping requirements for construction labor providers and the process for responding to a subpoena or request from the Department; and
- Create a penalty schedule for violations related to construction labor providers.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these new rules.

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. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter LL to read as follows:

Subchapter LL: Construction Labor Providers

§ 2-471 License Application Requirements.

(a) Construction labor provider licenses expire on July 31st in even numbered years beginning in 2024.

(b) An applicant for a construction labor provider license must complete and submit the Department's basic license application, a construction labor provider license application supplement, the self-certification required by section 20-564.1(c)(2), and any other documents and information requested by the Department in connection with the processing of the application.

(c) Pursuant to section 2 of Local Law 150 of 2021, an applicant who is engaged in business activities as a construction labor provider on December 11, 2021 must provide, in addition to all other application requirements, the information required by section 20-564.1(c)(3) of the Administrative Code for the period of time from December 11, 2021 to the date the initial application is submitted.

(d) If a construction labor provider licensee's license lapses for any reason, the construction labor provider must provide, as part of its next license application, in addition to all other application requirements, the information required by section 20-564.1(c)(3) of the Administrative Code for the preceding license term and any subsequent period of time during which the construction labor provider was unlicensed prior to submitting such license application.

§ 2-472 Notices.

(a) To comply with section 20-564.2(a) of the Administrative Code, construction labor providers must provide to covered construction workers as defined in section 20-564 of the Administrative Code, at the time of hiring, a notice of rights, as made available on the Department's website, in English and in the language identified by each such worker as their primary language, provided that if a model of a translated notice of rights is unavailable on the Department's website in the language identified by such worker as their primary language, the construction labor provider must give such worker a notice of rights in their primary language within 72 hours of hiring such worker, but no later than 12 hours before sending such worker on a construction job in New York City.

(b) To comply with section 20-564.2(b) of the Administrative Code, construction labor providers must complete and provide to applicants for employment as covered construction workers as defined in 20-564 of the Administrative Code, before such worker is asked to agree to work for such provider, a written certification notice, as available on the Department's website, in English and in the language identified by each applicant as their primary language, provided that if a model of a translated certification notice is unavailable on the Department's website in the language identified by such applicant as their primary language, the construction labor provider must give such applicant a certification notice in their primary language within 72 hours of learning that such applicant's primary language is a language other than English, but no later than 12 hours before hiring such applicant.

(c) To comply with section 20-564.2(c) of the Administrative Code, construction labor providers must complete and provide to covered construction workers as defined in 20-564 of the Administrative Code, at the time prescribed by section 20-564.2, a written notice of assignment, as made available on the Department's website, in English and in the language identified by such worker as their primary language, provided that if a model of a translated notice of assignment is unavailable on the Department's website in the language identified by such worker as their primary language, the construction labor provider must give such worker a notice of assignment in their primary language within 72 hours of learning that such worker's primary language is a language other than English.

(d) Construction labor providers must make available to covered construction workers as defined in 20-564 of the Administrative Code or applicants of employment as such workers, hired before the provider obtained a construction labor provider license from the Department, the notice of rights or certification notice, as made available on the Department's website, in English and in the language identified by each as their primary language within 72 hours of obtaining a construction labor provider license from the Department.

(e) To comply with section 20-564.3(a) of the Administrative Code, construction labor providers must obtain statements signed by each covered construction worker as defined in 20-564 of the Administrative Code and each applicant for employment as such a worker, in the language identified as their primary language, before dispatching such worker to a worksite in New York City, or hiring such applicant, or as otherwise applicable, indicating that such worker or applicant received, read and understood the notices provided to them pursuant to section 20-564.2 of the Administrative Code and subdivisions (a) through (d) of this section.

§ 2-473 Records.

(a) (1) A request or subpoena for information or records from the Department must be served on a construction labor provider in writing in person, via mail, or via email. A construction labor provider must respond to a written request or subpoena for information or records from the Department by providing to the Department true, accurate, and contemporaneously made electronic records or information within 20 days of the date that the request is received and in the formats and layouts prescribed by the Department in such request or subpoena.

(2) Notwithstanding paragraph 1 of this subdivision, a deadline of more than 20 days to respond to a request or subpoena for information or records may be agreed to on consent by the Department and the construction labor provider.

(3) The Department may issue a summons to a construction labor provider that fails to provide true and accurate electronic records or information by the deadline provided in the written request or subpoena or the deadline agreed to by the parties, provided that the monetary penalties authorized by section 20-104 of the Administrative Code for a violation of section 20-564.3 of the Administrative Code shall not apply while such written request or subpoena is the subject of a pending proceeding.

(b) In addition to all other records encompassed by section 20-564.3 of the Administrative Code, the following records are subject to a request or subpoena described in paragraph 1 of subdivision a of this section:

(1) Records identifying the corporate structure, ownership and the names of each principal and officer.

(2) Records identifying the total number of covered construction workers employed on worksites in New York City.

(3) Records identifying each third-party client and address of each New York City worksite where covered construction workers were dispatched by the construction labor provider.

(4) The signed statements by each covered construction worker, indicating that the covered construction worker received, read and understood the notices required to be provided to them.

(5) Records identifying the written acknowledgments from third-party clients that they received the notice of rights and notices of assignment.

(c) A construction labor provider’s failure to maintain, retain, or produce a record that is required by law or rule to be maintained and that is relevant to a material fact alleged by the Department in a summons, petition, or other notice of hearing creates a reasonable inference that such fact is true.

§ 2. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new Section 6-80 to read as follows:

§ 6-80 Construction Labor Providers Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, and any other provisions contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, or such respondent’s successor(s) as defined by section 20-564 of the Administrative Code, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within one year of the prior violation(s).

Penalties for violations of 20-564.1(a) of the Administrative Code accrue daily for every day during which the unlicensed construction labor provider operated.

Each covered construction worker or third-party client for whom the construction labor provider did not provide a notification in accordance with section 20-564.2 constitutes a separate and distinct offense.

Each day during which a third-party client accepts the services of a covered construction worker in violation of section 20-564.4 of the Administrative Code constitutes a separate and distinct offense.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-564.1(a)	Operating without a construction labor provider license	\$500 per day	\$500 per day	\$500 per day	\$500 per day	\$500 per day	\$500 per day
Admin Code § 20-564.1(b), (c), and (d)	Failure to comply with requirements for the issuance of a license	\$375	\$500	\$450	\$500	\$500	\$500

<u>Admin Code § 20-564.2</u>	<u>Failure to comply with requirements for providing required notices</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-564.3</u>	<u>Failure to comply with requirements for recordkeeping</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-564.4</u>	<u>Prohibition on third-party client accepting services of unlicensed construction labor provider</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-471</u>	<u>Failure to comply with requirements for the issuance of a license</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-472</u>	<u>Failure to comply with requirements for providing required notices</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY § 2-473</u>	<u>Failure to comply with requirements for recordkeeping</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>