



32BJ SEIU Comments on the New York City Department of Housing Preservation and Development Proposed Rules on Prevailing Wages for Building Service Employees

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

December 20, 2024

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32BJ SEIU represents nearly 95,000 workers in New York State, including many of the building service workers who will be covered by the prevailing wage requirements in the Affordable Neighborhoods for New Yorkers Tax Incentive (ANNY) and Affordable Housing from Commercial Conversions Tax Incentive (AHCC) benefits programs, established by the New York State Legislature in Chapter 56 of the Laws of 2024. We offer our support for the Department's proposed rules: (1) clarifying that provision of a dwelling unit is not considered a bona fide fringe benefit for the purposes of the prevailing supplements requirement; and (2) specifying the sanctions and revocation procedures under the ANNY and AHCC programs for violations of the prevailing wage requirements.

The Department's proposed §50-03 would disallow an employer from counting the provision of a dwelling unit as a fringe benefit towards satisfaction of the prevailing supplement rate. The proposed regulation incorporates into the city's rules the following provision from both ANNY and AHCC: "the provision of a dwelling unit shall not be considered wages or a fringe benefit..." §485-x(9)(c)(i); §467-m.(7)(c). The explicit exclusion of employer-provided housing from fringe benefits demonstrates the legislature's intent to ensure that all building service employees receive the full supplements rate, regardless of whether they reside at their worksite, and to prevent recipients of the tax incentive from seeking to reduce their obligation to workers who live and work at the property. 32BJ supported this critical housing legislation and we support regulations necessary to protect the service workers employed in ANNY and AHCC buildings and otherwise fully implement the programs.

The proposed rule, and the corresponding statutory language, are justified because building service employees who reside in the apartment building where they work do so for their employers' benefit, to facilitate the round-the-clock provision of building services, as required by city law. N.Y. Mult. Dwell. Law § 83 and NYC Administrative Code 27-2054 require that a janitor or other building service employee reside on-site or within two hundred feet from any multiple dwelling housing thirteen or more families. It should go without saying that rapidly rising housing costs and an affordable housing shortage make it nearly impossible for building service workers to find an affordable apartment on the same block as their worksite virtually anywhere in New York City. Building owners therefore almost always *must* provide onsite housing, and recruit a worker willing to live in it, to meet their legal requirements and responsibilities to tenants.



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Excluding the value of a building service worker's onsite apartment from fringe benefits is also consistent with tax law principles. Employer-provided lodging is excluded from federal employment taxation if it is furnished on the employer's premises; furnished for the employer's convenience; and the employee must accept it as a condition of employment. I.R.S. Publication 15-B, Employer's Tax Guide to Fringe Benefits.¹

32BJ also supports the Department's proposed rules clarifying that it may revoke both AHCC Program Benefits and ANNY Program Benefits upon three or more violations as determined by the Comptroller within a five-year period and requiring the Comptroller to notify applicants after the second violation that a further violation may result in revocation of tax exemption benefits and to publish a list of all applicants with two violations on its website. The enforcement scheme aims to ensure compliance with the building service employee prevailing wage, deter would-be violators, and effectively remedy violations. HPD and the Comptroller must have a full set of enforcement mechanisms available to them to carry out their obligations to protect workers and to make sure New York reaps the full benefits of the ANNY and AHCC programs.

¹ Available at https://www.irs.gov/publications/p15b#en_US_2024_publink1000193699.