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Background on Prevailing Wages and How They Currently Apply To Affordable Housing Development in New York City

Prevailing wages are established by job classification, such as electrician or carpenter, and include both wage and fringe benefit amounts that must be paid or provided to workers. Unlike the city's living wage laws, prevailing wages are not a uniform wage floor.[1]

Each trade is classified with a different wage, fringe, and paid holiday schedule. For some job classifications, there are different prevailing wages specified for new construction versus repair and maintenance work. A lower wage and fringe rate may be permitted for apprentice workers in a recognized apprenticeship program.

Prevailing Wages Introduce Additional Labor Rules. There are two sets of rules governing prevailing wages for construction workers in New York City, the federal Davis-Bacon and Related Acts and the New York State Labor Law Section 220. These laws establish wage and fringe benefit levels and also dictate overtime, holiday, and recordkeeping rules that for many aspects go beyond standard labor laws. Hourly wages are established by trade and the type of work being performed. In addition to wages, an hourly fringe amount is established for each job classification, paid in the form of employee benefits such as health insurance premiums, retirement contributions, life insurance, vacation and other paid leave, and contributions to training funds. Alternatively, the fringe amount may be paid to the employee directly in addition to hourly wage earnings.

Beyond establishing minimum wages and fringe benefit levels, prevailing wage laws also regulate worker hours and pay schedules. The federal Davis-Bacon prevailing wage laws require the standard time-and-a-half pay rate for any work over 40 hours in a week. The state prevailing wage laws, varying by job classification, may require overtime at either time-and-a-half or double-time for any work over eight hours in a single day, and weekend or night shift work. Paid holidays are also specified under prevailing wage laws, but these too vary by job classification. For example, under the Davis-Bacon rules, a boilermaker would be required to get Christmas Eve and New Year's Eve off, but an electrician would not. An electrician, however, would be required to receive Washington's Birthday and Election Day as paid holidays, which a boilermaker would not.

Employees working under prevailing wage rules must be paid weekly and records of their hours, pay rate, and job classifications must be submitted to the government agency monitoring for compliance with the rules. Prevailing wage laws also encompass extensive anti-kickback rules, to ensure that workers are not being paid the prevailing wage rate but then coerced into returning some of that income back to their employer. A poster explaining worker rights under prevailing wage laws must be publicly displayed at the job site.

The federal and state prevailing wage laws do not include a requirement to hire union labor, and therefore developers on projects that are required to pay prevailing wages are not mandated to

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hire union workers. Conversely, developers on projects with no prevailing wage requirements may choose to hire union workers.

How Prevailing Wages Are Determined

The process used to set prevailing wage and fringe rates differ between the federal Davis-Bacon act and the state's Section 220 rules, although for many job titles the results are quite similar.

Davis-Bacon: The U.S. Department of Labor Wage and Hours Division conducts a survey of wage and fringe benefit rates paid to workers in a given construction trade every three years. Contractors identified through reports by F. W. Dodge (a construction data analytics firm) are contacted directly with requests to submit wage data, although the survey is open to any interested party working in a given construction trade. Survey participation is voluntary, and prevailing wages are based upon the returned surveys, which may or may not be representative of the industry as a whole. If more than 50 percent of survey respondents report being paid the same wage and fringe benefit rate, then those wage and fringe rates are determined to be the "prevailing" amounts. If the majority threshold is not met, a weighted average of reported wages is calculated.

Section 220: In New York City, the Office of the City Comptroller establishes prevailing wage rates for Section 220 purposes on an annual basis. Prevailing wages are calculated according to the wages and fringe benefits for the trade union governing that job classification, so long as the Comptroller determines that at least 30 percent of workers in that trade belong to the union. If the 30 percent threshold is not met, then the Comptroller sets prevailing wages by averaging the wages and fringe paid to workers in each trade over the previous year.

For Davis-Bacon wage determinations in New York City, more than 50 percent of respondents in each trade reported the same wage and fringe rates—indicating that they are working under the same collective bargaining agreement—which then becomes the basis for the prevailing wage rates under the federal statute. For Section 220 purposes, the Comptroller has found at least 30 percent of workers to be unionized in each trade, so union collective bargaining agreements are used to set prevailing wages. In both cases, prevailing wage and fringe rates end up being based upon the collective bargaining agreements for the construction trade union that corresponds to a prevailing wage job classification. Both the federal and the state prevailing wage schedules specify the local chapter of the construction trade union whose collective bargaining agreement formed the basis for the prevailing wage determinations.

Prevailing Wage Rates Are Higher Than Median Industry Wages

Comparing prevailing wages to other government measures of average or median wages in various industries can be problematic because of differences in how job titles and duties are classified. For example, Davis-Bacon breaks out wages and fringe for the electrician job title by new construction work and repair and maintenance work. Additionally, Davis-Bacon allows for a separate, lower pay schedule for apprentice workers. In contrast, the federal Bureau of Labor Statistics reports one median rate for the electrician job title that reflects any type of electrical work, and this median calculation includes union and nonunion wages and apprentice wages.

Although there are local Davis-Bacon wages determined for construction projects in New York City, there is no requirement in the prevailing wage laws that workers be city residents—the construction industry in New York City employs workers who reside both within the city and in the greater metro area. In comparing a selection of job titles with a single Davis-Bacon wage rate for the city to

Davis-Bacon Wages Are Higher Than Industry Median Wages: Selected Trades

Construction Trade	Davis-Bacon Prevailing Hourly Wages	Median Industry Hourly Wages	Percent Difference
Boilermaker	$49.47	$40.61	22%
Carpenter	50.50	29.48	71%
Cement Mason	45.88	37.37	23%
Roofer	40.70	24.41	67%
Structural Ironworker	48.75	42.62	14%

SOURCES: Davis-Bacon Wage Determinations as modified November 13, 2015; U.S. Department of Labor Bureau of Labor Statistics Occupational and Employment and Wage Estimates, May 2014
NOTE: Area median wages represent the New York-White Plains-Wayne, NY-NJ metropolitan division.

New York City Independent Budget Office the New York metro area median wage for the equivalent title reported by the Bureau of Labor Statistics, IBO found that prevailing wage rates are higher than the industry median but by varying degrees.[2] (This side-by-side comparison does not differentiate between worker training or experience levels.) For example, the prevailing hourly wage for a boilermaker is 22 percent higher than the median for the industry, while the prevailing hourly wage for a carpenter is 71 percent higher than the median. These comparisons suggest that workers under prevailing wage rules are making higher wages than workers performing similar duties in the industry as a whole. Since prevailing wages in New York are based upon union collective bargaining agreements, wage differences between prevailing wages and median industry wages will be influenced by the share of workers in that trade who are unionized—greater differences between prevailing wages and industry median wages may reflect fields that are less unionized than others.

Prevailing Wages Already Apply to Some Affordable Housing Projects

Federal Housing Funds Can Result in Prevailing Wage Requirements. Projects using selected federal funding sources through the U.S. Department of Housing and Urban Development (HUD) are currently required to pay Davis-Bacon wages for construction work being performed. The rules around which projects require prevailing wages may vary depending on the number of housing units certain funding streams are paying for, and the timing and use of those funds.

There are two main HUD funding sources used to finance the new construction and preservation of affordable housing in New York City that can require Davis-Bacon rules if funds assist 12 or more units: the HOME Investment Partnership Program and Section 202 Supportive Housing for the Elderly. Not all projects with HOME funds, even if they are 12 units or larger, necessarily require prevailing wages however. Projects using HOME funds can be structured to assist fewer than 12 units that are set-aside as "HOME units" within a larger affordable housing project. In such a case, prevailing wages would not be required. Conversely, Section 202 funds have a prevailing wage requirement based upon the total number of units in the development project.

Additionally, projects that intend to use Section 8 Project-Based Rental Assistance for 9 or more units within 18 months of the project's development are also required to pay Davis-Bacon wages. Section 8 Project-Based Rental Assistance is generally used in New York City to subsidize apartments to be affordable to households at the lowest income levels. Many Section 8 Project-Based Rental Assistance projects also receive financing from other sources that require prevailing wages, such as HOME funds. For any development project that has a funding stream that triggers prevailing wages, the use of even $1 of the specific federal funding sources results in a requirement that prevailing wages apply to the entire construction project.

HUD Funds Requiring Prevailing Wages Are Generally Used for Supportive and Senior Housing. Most of the affordable housing financed from fiscal years 2010 through 2015 in New York City that requires prevailing wages have been either supportive housing or senior housing. Among prevailing wage projects in our study, 59 percent were supportive housing

City-Financed Projects that Pay Prevailing Wages Are Generally Smaller Than Other Projects

Project and Building Characteristics	Mean: Non-Prevailing Wage (N = 142)	Mean: Prevailing Wage (N = 69)
Total Project Units	120	85
Average Unit Size (square feet)	947	720
Number of Stories	10	7

SOURCE: IBO analysis of Department of Housing Preservation and Development and Department of Buildings data

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Main Housing and Urban Development Programs That Require Prevailing Wages, 2010-2015

Funding Source Name	Prevailing Wage Standard
HOME Investment Partnerships	HOME funds are under contract to assist 12 or more units, including both construction and non-construction expenses (such as land purchase); does not depend on the overall number of units in the project.
Section 202 Supportive Housing for the Elderly	Project contains 12 or more units.
Section 8 Project-Based Rental Assistance	Development work done within 18 months of the issuance of a Project-Based Rental Assistance contract; 9 or more units are assisted through Project-Based Rental Assistance.

SOURCE: Federal Labor Standards Requirements in Housing and Urban Development Programs Handbook 1344.1 Rev 2, Appendix II-5

New York City Independent Budget Office and 25 percent were senior housing. In contrast, among projects that did not require prevailing wages, only 6 percent were supportive housing and only 4 percent were senior housing. Supportive and senior housing, on average, have smaller units and are in smaller buildings, meaning that the city's prevailing wage projects tend to have smaller units in smaller buildings. Because of these differences, simply comparing construction costs on a per-unit basis between prevailing wage and non-prevailing wage projects, without accounting for differences such as building characteristics, would be misleading.

Methods of Estimating the Impact of Prevailing Wages on Construction Costs

Most of the existing research looks at the impact of prevailing wages on large, publicly funded infrastructure projects such as highway and school construction, which are difficult to then translate to impacts on affordable housing construction. There are only a few previous studies that have attempted to directly relate prevailing wages to the cost of constructing affordable housing.

Analysts have used two approaches to estimating the impact of requiring prevailing wages, either a hypothetical model or multiple regression analysis. Estimating the impact of prevailing wages through a hypothetical approach does not rely on observed cost data, but instead relies on combining assumptions about labor costs and labor's share of a total project cost into a theoretical model. The Citizens Housing and Planning Council (CHPC) used this approach, adapting a hypothetical model developed by the Center for Governmental Research that had covered multiple areas around New York State, and then modifying it to be more specific to New York City.[3] The Center for Governmental Research in their study estimated that labor costs would increase by 80 percent under prevailing wages, and CHPC in their adaptation applied a Fiscal Policy Institute estimate that labor costs accounted for one-third of total development costs, defined as hard costs, soft costs, and land acquisition. Based upon these assumptions, CHPC concluded that prevailing wages would increase total development costs by 27 percent, which they then adjusted down to 25 percent to reflect possible productivity gains that may come with paying prevailing wages.

The second approach to estimating the impact of prevailing wages on affordable housing construction costs is to use multiple regression analysis to isolate the impact of prevailing wages while statistically controlling for other aspects of the development that may influence costs. Regression analysis requires both cost data and information on the buildings being constructed. A 2005 study published by three researchers at the University of California, Berkeley used multiple regression to estimate the impact of prevailing wages on affordable housing built through California's Low-Income Housing Tax Credit Program.[4] The researchers analyzed actual construction costs for 205 tax credit projects across California. The authors estimate prevailing wages to increase construction costs in the range of 9 percent to 37 percent, with their most extensive models adjusting for the possibility that prevailing wage projects may have corresponded with high construction cost areas in California. Using multiple regression to estimate the impact of prevailing wages is limited by the quality of data that is able to be obtained for construction projects and the estimation techniques used to analyze the data.

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Endnotes

[1]The term "living wage" is often used in a general context to refer to the hourly wage a worker would need to earn in order to fall above a given poverty threshold. New York City's living wage law sets a specific wage floor for workers under many city contracts and city-subsidized economic development projects. As of January 2016, living wage is currently set at $11.65 per hour plus $1.65 per hour in fringe benefits (or additional wage in lieu of benefits), and is tied to the inflation rate. The state's minimum wage has two levels, one for tipped workers and another for other workers.

[2]The Citizens Budget Commission did a similar comparison of hourly wage comparisons for Section 220 wages to the mean of New York City metro wages reported through the Bureau of Labor Statistics and concluded that prevailing wages were "almost universally higher." See Maria Doulis, Six Things New Yorkers Should Know About Prevailing Wages, Citizens Budget Commission (February 2012). Proponents of prevailing wages acknowledge higher wages, but then counter this with claims that higher labor costs are offset by greater productivity and a better trained workforce. See Fiscal Policy Institute, The Economic Development Benefits of Prevailing Wage (May 2006).

[3]Roistacher, Elizabeth A., Jerilyn Perine, and Harold Shultz, Prevailing Wisdom: The Potential Impact of Prevailing Wages on Affordable Housing, Citizens Housing and Planning Council (December 2008).

[4]Dunn, Sarah, John M. Quigley, and Larry A. Rosenthal, "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing," Industrial and Labor Relations Review, vol. 59, no. 1 (October 2005), pp. 141-157.