

This Week in New York

Covering New York State and City Government

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In the News – New York State

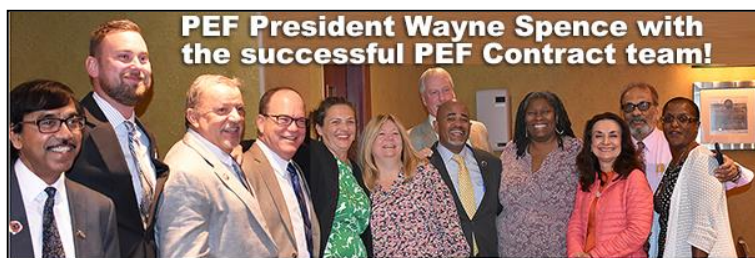


PEF & Cuomo Administration Reach Tentative Labor Contract

The New York State Public Employees Federation (PEF), New York's second-largest state worker's union, has reached a tentative three-year labor agreement with the Cuomo administration.

The agreement runs from April 2016 to April 2019 and provides for three compounded wage increases of 2 percent per year, retroactive to April 2, 2016. It is subject to approval by the PEF Executive Board and membership. The union's Executive Board is set to meet November 16th and 17th. If approved, it would go to the membership for a vote.

According to the union, of "critical importance" is the fact that the contract includes no health care concessions and no negotiated changes in health care benefits or costs. The contract provides no increases in member co-pays, deductibles, and no other increases in out-of-pocket costs to members for the full three-year term of the contract. Both the state and PEF agree to work together on a plan to reduce health care costs.



Wayne Spence said, "Most importantly, I want to thank the members of PEF's contract team who have worked hard and tirelessly over the past two years on this contract, which the contract team unanimously approved and recommend for approval by the PEF Executive Board and for ratification by PEF's membership. I am proud to have been a part of this process and look forward to the ratification of this three year contract."

"On behalf of PEF's 54,000 members, I would like to thank the Governor, members of his executive staff and the Governor's Office of Employee Relations (GOER) bargaining professionals for their hard work and cooperation in connection with this agreement," PEF President

"The new contract strikes a balance of ensuring that our public servants are treated fairly, while reaffirming our commitment to fiscal discipline that taxpayers deserve," Governor Andrew Cuomo said. "This is an important step in our efforts to maintain New York's outstanding workforce."

The previous four-year contract expired at the end of March 2015 and included a three-year pay freeze followed by a 2 percent raise. Earlier this year, union members received a 2 percent increase retroactive to April 2015.

Advocates for Developmentally Disabled Caretakers Ramp Up Wage Push

Minimum Wage Increase Squeezes Providers Who Have Been Operating Without Medicaid Rate Increase

Eight years without significant Medicaid rate increases and the impending minimum wage increase in threatening the funding for providers of supports and services for 134,000 developmentally disabled New Yorkers.

Advocates, including former and current lawmakers, rallied in Albany this week to push for more State budget funding to pay direct caregivers a living wage. Organizations serving the developmentally disabled have seen only one rate increase since the recession of 2008, an average increase of less than one-half of one percent per year. The BFair2DirectCare coalition indicates there is a \$45 million annual need for funding direct caregiver pay for the next six years.



"Listen to the voice of the people. Give the money. Put the money in the budget," former Assemblyman Harvey Weisenberg, whose son Ricky is developmentally disabled, said. "Don't make this legislature fight to get the resources that are necessary to help the most vulnerable population in this state ... these people are getting paid less money taking care of your loved ones than people flipping hamburgers."

New York Governor Andrew Cuomo and the Legislature approved a minimum wage which will gradually increase to \$15 an hour downstate and \$12.50 an hour upstate. The agencies that care for the developmentally disabled assert they will not be able to afford the increased wage rate because Medicaid rates have not increased.

Former Assembly Minority Leader and former Congressman Tom Reynolds, from the Buffalo area explained that more than 90 percent of the funding that sustains these organizations comes from government, and 80 percent of that goes directly to wages for staff.

"We need to help the governor and the legislature understand there needs to be more money in the pot for direct care. We need to be fair to direct care," Mr. Reynolds said. "Now is the time."

According to a 2016 Vacancy and Turnover Survey recently provided by the coalition to the NYS Office for People with Developmental Disabilities (OPWDD), competition from other employers has increased to the point where coalition agencies currently have a nearly 10 percent vacancy rate and more than a 20 percent turnover rate in these jobs.

In a statement, OPWDD indicated that the increase to the state's minimum wage benefits all workers. The agency is working on workforce enhancement efforts, including retention and recruitment improvement.

Earlier this month, Governor Cuomo vetoed legislation to require a state study of the high vacancy and turnover rates among caregivers for developmentally disabled New Yorkers. In his veto message, Governor Cuomo said OPWDD released a 2014 study of similar issues and is now reviewing it to find a method to support staff.



NYS Department of Financial Services Fines Company Providing Pension Advance Loans

The State has cracked down on a California company that was targeting New York State pensioners, offering loans in exchange for monthly pension benefits. The State Department of Financial Services (DFS) entered into a consent order with Future Income Payments, LLC (FIP), and its owner Scott Kohn, requiring them to return funds to consumers, pay a \$500,000 fine, and ban them from offering pension advance loans in New York State.

The action was taken after a DFS investigation found the company intentionally misrepresented the transactions which involved pensioners borrowing lump sum payments in exchange for some or all of their monthly pension benefits. Under the consent order, FIP will be required to forgive certain debts, make refunds to other pensioners and install a DFS-selected third-party administrator to oversee consumer refunds and forgiveness loans.

According to DFS, FIP marketed its product as a way for pensioners to get cash quickly. Consumers signed agreements with FIP to get one-time lump sum payments and in exchange, made monthly payments of their pensions to FIP for periods of up to 10 years. DFS's investigation found that FIP made loans to 282 New York pensioners between March 2012 and April 2015. The loans ranged in amounts from \$2,500 to \$58,500.

The DFS investigation found that FIP improperly described transactions as “sales of assets,” rather than loans. FIP is not licensed to make loans in New York, nor is the company licensed as a money transmitter. In addition, the investigation found the company portrayed interest charges as “discounts” and failed to tell pensioners of annual percentage rates. FIP also violated New York’s interest usury laws which cap interest rates at 16 percent. Some pensioners were charged annual interest rates of more than 130 percent.

Although the agreements were between FIP and pensioners, the terms of the contracts enabled FIP to sell its rights to pension payments to third-party investors, who provided funding to make the original loans. The investors then received proceeds under the pensioners’ repayment obligations after they were received by FIP.

The consent order requires FIP to adjust the total amount owed by pensioners to the actual value of the lump sum that was advanced and to forgive amounts due over that amount. In addition, the company will be required to make refunds to pensioners who paid more than the lump sums they originally borrowed.

DFS will select a third-party administrator to oversee and report to DFS the company’s debt reform, forgiveness, and refund obligations to New York pensioners. FIP will also be required to revise its advertising to clearly disclose that its pension advance operations may not be conducted in New York State. The company markets its loans nationally through its website and online marketing entities, purchasing consumer leads, and referrals from other pension lenders.

Based in Irvine and Corona del Mar, California, FIP was formerly known as Pensions, Annuities & Settlements, LLC. It uses marketing affiliates operating under the names Cash Flow Investment Partners, LLC, Pension Advance, LLC, and BuySellAnnuity, LLC.

In the News – New York City

Governor Signs Bill Declaring Short-Term Rental Advertising Illegal

Governor Andrew Cuomo today signed legislation that would impose strict fines for advertising short-term home rentals on AirBnb and other media. Chapter 396 of the Laws 2016 clearly establishes that the advertising violates New York’s illegal hotel law.

Under the new law, which takes effect immediately, advertising is defined as “any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media including but not limited to newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites, and text messages.” Violators could be subject to a \$1,000 fine for the first offense, a \$5,000 for a second offense, and a \$7,500 fine for a third and subsequent offenses.

"This is an issue that was given careful, deliberate consideration, but ultimately these activities are already expressly prohibited by law," Governor Cuomo's spokesman Rich Azzopardi said in a statement Friday. "They also compromise efforts to maintain and promote affordable housing by allowing those units to be used as unregulated hotels, and deny communities significant revenue from uncollected taxes, the cost of which is ultimately borne by local taxpayers."

The legislation was sponsored by Staten Island Senator Andrew Lanza and Manhattan Assemblymember Linda Rosenthal.

In 2010, in the face of an explosion of illegal hotel operators in single room occupancy buildings in New York City, New York State clarified and strengthened the laws regarding transient occupancy in class A multiple dwellings.

Under current law, it is illegal in New York City to occupy a class A multiple dwelling unit for fewer than 30 days. The legal prohibition against transient occupancy in these dwellings was instituted to ensure that all buildings comply with fire, building and other safety codes relative to their class. Safety codes for class A multiple dwelling are different than for buildings allowing transient occupancy to ensure that specific classes of occupants are best protected.

Proponents of the legislation asserted that with the proliferation of online home sharing platforms that allow users to advertise their apartments for use that directly violates New York State's "illegal hotels" law, the purpose of the "illegal hotels" law was at risk of being undone.

According to published reports, Airbnb will file a suit this afternoon against New York City, Mayor Bill de Blasio, and Attorney General Eric Schneiderman "in their official capacity as enforcement agents" to contest the new law.

Mayor de Blasio Outlines Core Principles of Legislation to Make the Disciplinary Records of Law Enforcement and Other Uniformed Personnel Subject to Disclosure

Mayor Bill de Blasio has called for significant amendments to Section 50-a of the New York State Civil Rights Law to make disciplinary information about police officers and other uniformed personnel covered under this section of the law subject to disclosure.

According to the Mayor, Civil Rights Law Section 50-a, in existence since 1976, treats as confidential all personnel records of law enforcement and other uniformed personnel that are used to evaluate performance toward continued employment or promotion. Under this section of law, personnel records of law enforcement and other uniformed personnel may only be disclosed pursuant to a court order or with the express written consent of the employee to whom the records pertain. Several appellate court decisions have held that personnel records, including summaries of disciplinary actions taken against law enforcement and other uniformed personnel, cannot be disclosed because of the confidentiality protections under Civil Rights Law Section 50-a.

“This Administration is committed to bringing greater transparency to the disciplinary records of law enforcement and other uniformed personnel. The public interest is disserved by State Civil Rights Law Section 50-a in its current, flawed form,” said Mayor de Blasio. “... we are announcing a set of guiding principles that must shape the necessary amendments required to legally disclose the disciplinary records of law enforcement and other uniformed personnel. Without significant changes to this statute, the City remains barred from providing New Yorkers with the transparency we deserve. We hope advocates for greater transparency will join us in the effort to reform this State law.”

The de Blasio Administration asserts that it is constrained to follow State law and binding appellate court rulings, and to apply the law evenly in all circumstances regardless of who the covered employees are. However, the Administration “strongly believes that the public interest in transparency and accountability for those in positions of public trust is not well-served by the law as it currently exists” and, therefore, it will seek amendments to Civil Rights Law Section 50-a in the upcoming 2017 state legislative session.

To follow is the specific language of Section 50-a of the Civil Rights Law:

§ 50-a. Personnel records of police officers, firefighters and correction officers. 1. All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics and such personnel records under the control of the department of corrections and community supervision for individuals defined as peace officers pursuant to subdivisions twenty-three and twenty-three-a of section 2.10 of the criminal procedure law and such personnel records under the control of a probation department for individuals defined as peace officers pursuant to subdivision twenty-four of section 2.10 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic, correction officer or peace officer within the department of corrections and community supervision or probation department except as may be mandated by lawful court order.

2. Prior to issuing such court order the judge must review all such requests and give interested parties the opportunity to be heard. No such order shall issue without a clear showing of facts sufficient to warrant the judge to request records for review.

3. If, after such hearing, the judge concludes there is a sufficient basis he shall sign an order requiring that the personnel records in question be sealed and sent directly to him. He shall then review the file and make a determination as to whether the records are relevant and material in the action before him. Upon such a finding the court shall make those parts of the record found to be relevant and material available to the persons so requesting.

4. The provisions of this section shall not apply to any district attorney or his assistants, the attorney general or his deputies or assistants, a county attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputies or assistants, a village attorney or his deputies or assistants, a grand jury, or any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.

“I believe in transparency. I also believe that making information about disciplinary proceedings public will help us build trust with the community,” said NYPD Commissioner James P. O’Neill. “It is my hope we can work with the State legislature and the Governor on the proposed 50-a amendment.”

The Administration proposes to work with “partners in state government, labor leaders and unions, clergy, advocacy groups and other key stakeholders” to include the following amendments:

- Remove confidentiality protections currently applicable to disciplinary records, including all cases prosecuted by the New York City Civilian Complaint Review Board (CCRB) in the trial room, thereby subjecting the full public record of the disciplinary proceeding and the results of such disciplinary proceeding to public disclosure. This would include final factual findings and disposition of any disciplinary measures imposed (or not imposed).
- In a litigation context, maintain current law restrictions on the use of covered personnel records in litigation which require a finding that records being disclosed are relevant to the specific case, but also adds that the judge must find that the records’ probative value outweigh the prejudicial harm of admitting them.
- Continue to allow permitted access for other governmental agencies, such as district attorneys and corporation counsels, in furtherance of a governmental function.

If enacted, the legislation would result in the following items to be posted on the NYPD website pertaining to each case disposed of:

- Officer's Name
- Charges Made
- Transcript and Exhibits of the Departmental Hearing
- Summary of the Decision of the Trial Judge
- Final Determination by the Police Commissioner

These cases would be posted online and no FOIL action would be required to access the above information. The cases posted would include both NYPD-initiated and CCRB prosecuted cases.

Bills Approved by the Mayor

Intro. 642-A, sponsored by Council member Constantinides, sets new deadlines and milestones for the percentage of required biodiesel in heating oil by volume. Additionally, the bill requires that a survey will be published by 2020 examining compatibility matters; a separate report will be presented to the Mayor and Council Speaker in 2023, which would re-assess the availability of biodiesel supply to meet future demand.

Intro. 899-A, Council Member Gibson will increase the transparency to procedures and reporting for the Rikers Island nursery program. This bill defines many aspects of the nursery program at Rikers, such as the terms child, nursery, staff, and use of force. Additionally, this bill requires that the child and mother will be housed in the nursery unless the warden of the facility denies the child admission to the nursery. Finally, the law stipulates that the Department of Correction must release an annual report on their website including the total number of children admitted to the nursery, the daily population of children in the nursery, the total number of applicants to the nursery, the rate of incidents involving use of force, and the number of both accepted and denied applicants to the nursery; if they were denied, where they were placed.

Intro. 1014-A, sponsored by Council Member Johnson, requires the Department of Correction to post on its website an annual report regarding mentally ill inmates. This law defines an eligible inmate as an inmate whose period of confinement is 24 hours or longer and receives no less than two visits from mental health staff. Additionally, this law also clearly states that the DOC must post an annual report, permanently accessible through the DOC website, regarding mentally ill inmates and recidivism, with information on the number of inmates released by the department into the community, the number of eligible inmates released into the community, the number of MH eligible inmates released into the community who were eligible during the report period and how many of these inmates returned into custody within one year of being released.

Intro. 1064-A, sponsored by Council Member Crowley, requires the Department of Correction to evaluate programs it utilizes. Specifically, this bill requires the evaluation of inmate programming and structured services offered to inmates, submitting an annual summary of each evaluation. This summary will include: the amount of funding received, estimated number of inmates served, a brief description of the program being offered and include a comparison between the current year and prior five years.

Intro. 1144-A, sponsored by Council Member Cumbo, requires the use of trauma-informed care in city correctional facilities. This bill defines the terms trauma-informed, staff and the words training, reporting and usage. This bill requires the department to monitor the use of trauma-informed care and provide trainings to all appropriate staff. Additionally, the guidelines for use of trauma-informed must be consistent with standards developed by the substance abuse and mental health services administration of the United States Department of Health and Human Services. An annual report of the number of employees trained, a description of the guidelines and any programs utilizing trauma-informed care, beginning in 2018 and every year afterward.

Intro. 1183-A, sponsored by Council Member Cohen, requires arrestee health screenings and the exchange of health information of inmates in the custody of the Department of Correction. This bill defines arrestee under custodial arrest by the Police Department, while also requiring a medical treatment report when an arrestee is treated by a health care provider while in custody; this report must include a brief description of the arrestee's medical condition and the arrestee's name and other identifying information. Additionally, this bill adds a new chapter which includes definitions of arrestee, health care provider, health evaluation and inmate. This bill also stipulates that DOHMH, or its designee, is to oversee a medical or mental health screening, to then be provided to New York City Health + Hospitals along with any other relevant medical records.

Intro. 1277-A, sponsored by Council Member Williams, will conform the New York City Energy Conservation Code to recent amendments in the 2016 New York State energy code. This bill makes various technical corrections as well as updates to align with new changes adopted by New York State to its energy code.

Briefs

NY Requires Health Insurers to Cover Addiction Treatment Drugs

The State Department of Financial Services is requiring more health insurers to cover the cost of medications used to help those struggling with opioid addiction. In rules released this week, DFS directed large group insurance policies to cover the medications. The rules mirror those already covering small-group and individual policies.

The state will also require insurers to cover inpatient substance abuse treatment in in-network facilities.

Forbes Names Albany as Best Place to Do Business

Forbes has named Albany, New York as one of the 200 best places for business and careers in 2016. The annual list, which factors in cost of business, job growth, education, quality of life and population, ranked Albany as the best place in the state to do business and 64th nationally.

Other New York cities on the list include New York City, ranked 99th, Buffalo, 103rd, and Long Island, 109th.

NYC Campaign Finance Board Chair to Step Down

Rose Gill Hearn, chairwoman of the New York City Campaign Finance Board, plans to step down in December. Ms. Gill Hearn, a former federal prosecutor, is resigning to devote her time at her paid position as a principal at Bloomberg Associates. 'My increasingly heavy work schedule no longer permits me to devote the time warranted for the important activities of the board,' she said in her resignation letter.

The top position on the five-member Campaign Finance Board is appointed by the Mayor to serve a five-year term.

City Launches Sustainability Initiative For Film And Television Industry

New York City this week launched "NYC Film Green," a sustainability designation program for New York City's \$9 billion film and television industry. The voluntary initiative will encourage productions to engage in sustainable practices, including waste reduction, energy conservation, and staff education, in order to reduce their environmental impact.

Based on data provided by six feature film productions that voluntarily worked to reduce their environmental impact, an average NYC Film Green feature production could divert over 60 percent of its waste, and prevent over 380 unnecessary tons of waste from going to the landfill. Similarly, based on data provided by five eco-conscious episodic series, an average NYC Film Green TV production could divert over 60 percent of its waste, preventing almost 45 unnecessary tons of waste from going to the landfill.

A number of major New York City-based television productions have already engaged in voluntary sustainability efforts and reported great success in waste diversion. For example, over the course of production for the second season of CBS's *Madam Secretary*, crew and staff successfully diverted 71 percent – or 62,495 pounds – of the show's total waste. While 16,540 pounds of waste went to landfill, a total of 31,670 pounds went to compost, 8,324 pounds were recycled and 5,961 pounds of materials were donated.

Coming Up

New York State

Monday, October 24th

Ethics & Guidance Committee, Legislative Office Building, Albany, 10 a.m.
New York State Assembly
Executive Session Only

New York City

Wednesday, October 26th

Committee on Consumer Affairs, Council Chambers – City Hall, 10 a.m.
Int 0072-2014 in relation to reporting and posting information pertaining to mobile food vendors.

Int 0078-2014 in relation to requiring food vendors to post prices.

Int 0432-2014 in relation to allowing street vendors to transfer license to a family member.

Int 1061-2016 in relation to Asian Lunar New Year flower sales.

Int 1299-2016 in relation to certificate of authority to collect sales tax.

Int 1303-2016 in relation to expanding availability of food vendor permits.

T2016-5114 in relation to vendors vending within three feet of curb.

T2016-5115 in relation to vendors vending in proximity to bus stops and taxi stands.

T2016-5116 in relation to placing items on vending carts.

Committee on Governmental Operations, Committee Room – City Hall, 10 a.m.
T2016-5000 Oversight-New York City Board of Elections.

Committee on Juvenile Justice, 2250 Ryer Avenue, Bronx, 10 a.m.
T2016-5071 Tour of Ryer Limited Secure Placement.

Committee on Aging, 250 Broadway—Committee Room 16th FL 10 a.m.
Int 0096-2014 in relation to legal counsel for senior citizens subject to eviction.

Committee on Courts and Legal Services, 250 Broadway--Committee Room 14th Fl 1 p.m.T2016-5047 Oversight-Evaluating the Progression of Justice Reboot.

Committee on Higher Education, Committee Room – City Hall, 1p.m.
T2016-5077 Oversight-CUNY Pathways Update.

Thursday, October 27th

Committee on Finance, Committee Room – City Hall, 10 a.m.
T2016-5115 Resolution regarding Expense Budget.

T2016-5115 in relation to Villa Gardens.

City Council Stated Meeting, Council Chambers – City Hall, 1:30 p.m.

Friday, October 28th

Committee on Environmental Protection, Committee Room – City Hall, 10 a.m.
Int 0835-2015 in relation to establishing requirements for green roof systems.

Committee on Transportation, Council Chambers – City Hall, 10 a.m.
T2016-5109 Oversight-The Future of Driverless Vehicles in New York City.

Committee on Sanitation, Council Chambers – City Hall, 1 p.m.
T2016-4994 Oversight-NYC Department of Sanitation 2015-16 Snow Plan.

Int 1023-2015 in relation to removal of snow.

Committee on Veterans, Committee Room – City Hall, 1p.m.
Res 1196-2016 Resolution calling on the United States Congress to pass H.R. 4683/S. 1567.

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120 Broadway, 28th Floor
New York, New York 10271
Telephone (212) 652-3890
Facsimile (212) 652-3891

111 Washington Avenue, St. 401
Albany, New York 12210
Telephone (518) 449-3320
Facsimile (518) 449-5812

25 Hyatt Street, St. 202
Staten Island, New York 10301
Telephone (718) 943-1050
Facsimile (718) 943-1051