

# Construction Workers

in

## New York State

### Profile

### Working Conditions

### Prevailing Wage Law

By

Moshe Adler, Ph.D.  
Director, Public Interest Economics  
917 453 4921

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Van Arsdale Center for Labor Studies  
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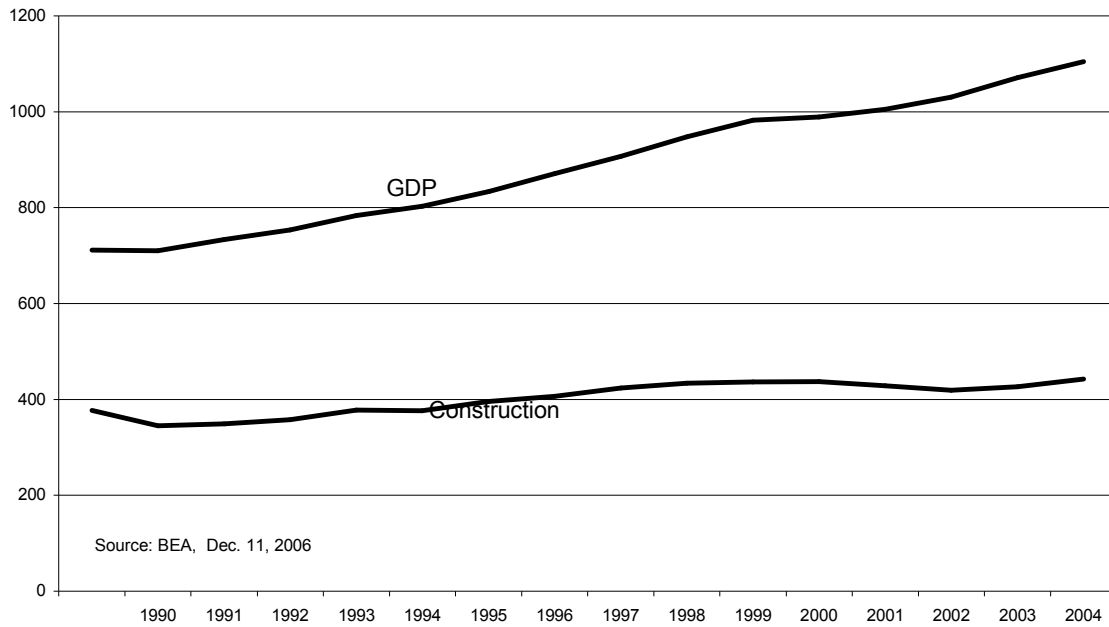
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# **Workers and Working Conditions**

## **1. The Construction Industry in the Economy**

The construction industry is by nature a stable industry. It could never have growth rates of entirely new industries like IT on the one hand, but neither can it be battered by imports like manufacturing on the other. Figure 1 traces the value added in the construction industry and in GDP.

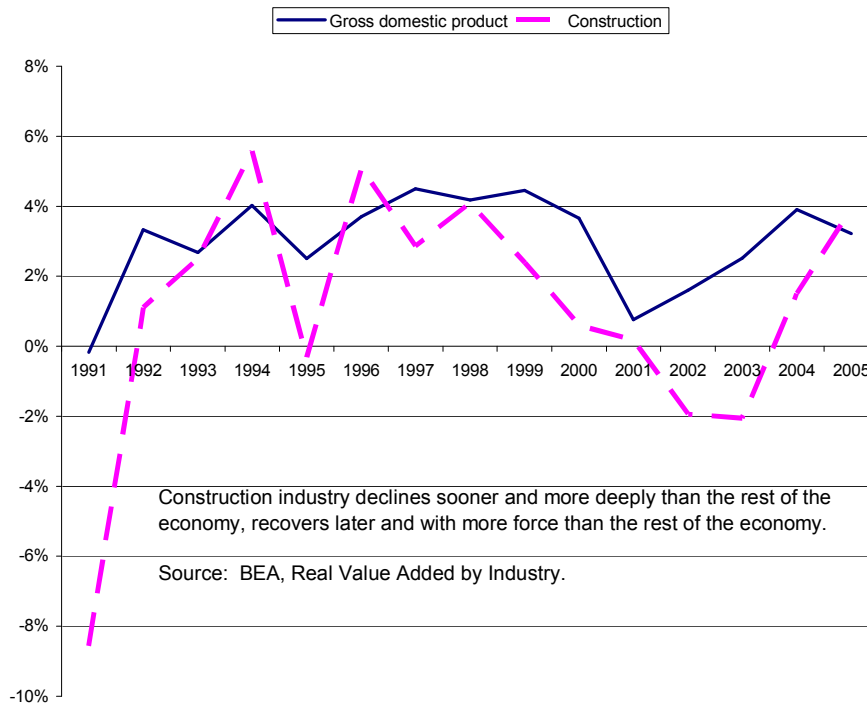
**Real Value Added, GDP and Construction**  
**Billions of 2000 Chained Dollars**  
**(Tens of billions for GDP)**



**Figure 1: A Stable Industry in the long run**

While the construction industry is remarkably stable over the long run, it is also remarkably unstable during periods of economic adjustments. As Figure 2 shows, when the economy slows down the construction industry does so earlier and more deeply than the rest of the economy and when the economy recovers the construction industry starts its own recovery later and at faster growth rates.

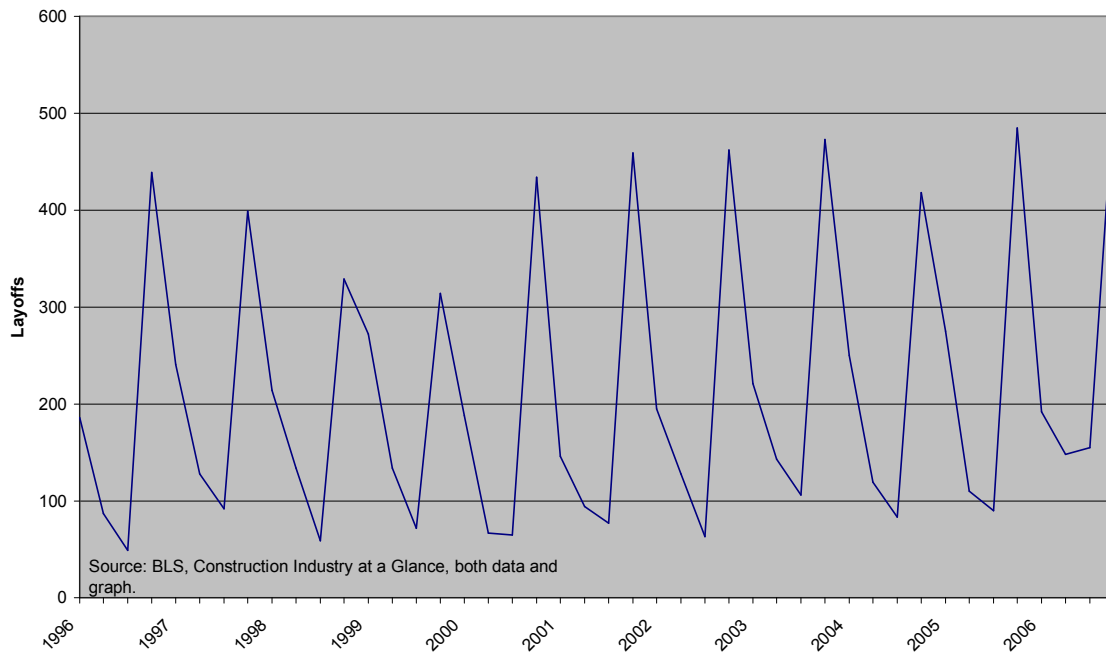
**Percentage Growth in Value Added, All Industries, Construction, 1990-2005**



**Figure 2: A boom and bust industry over the short run**

Workers in the construction industry are therefore buffeted even more than workers usually are from the gyrations of the economy. In addition, their work is seasonal, as Figure 3 of “extended mass layoffs” shows, with peak layoffs occurring in the fourth quarter of each year. (An “extended layoff” is a layoff that lasts at least 31 days and involves 50 or more individuals from a single establishment filing initial claims for unemployment insurance during a consecutive 5-week period.)

**Extended Mass Layoffs in the Construction Industry  
1996-2006**



**Figure 3: Seasonal Employment**

Construction work is dangerous. In 2005, the last year for which the data are available, there were 1,186 fatalities in construction and 414,900 nonfatal injuries and illnesses.<sup>1</sup> The nonfatal injuries and illnesses incidence rate was 6.3 per 100 full-time workers in construction and 4.6 per 100 full-time workers in all private industry, which is a 37% difference.

## **2. The Role of Government in the Construction Industry**

The construction industry produces 5.5% of the total GDP in the US,<sup>2</sup> and 24 % of this output is purchased by governments of all levels, federal, state and local. The

<sup>1</sup> [http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?&series\\_id=FIU00XGP1CON81N00](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?&series_id=FIU00XGP1CON81N00)

<sup>2</sup> BEA IO Use table, 2004 (government purchases for consumption and intermediate goods).

construction industry employs nearly 7 million workers.<sup>3</sup> This means that 1.3 million workers in the construction industry, almost one in four, work on construction projects that are purchased directly by government entities. These government entities also finance projects that they do not own, such as low income housing or economic development projects. In 2003 the federal government alone spent \$40 billion on low income housing subsidies, although it is not clear how much of this money was devoted to new construction.<sup>4</sup> But the proportion of construction workers who work for the government is probably even higher than one in four.

### **3. Construction Workers in New York State: A Profile**<sup>5</sup>

#### Race and Hispanic Origin

Table 1 shows the races of construction workers in the five biggest occupation categories, while Table 2 classifies them according to Hispanic origin. As the tables show, the construction occupations are fairly integrated with a small under representation of blacks (16% of all workers, 13% of construction workers) and a large overrepresentation of Hispanics (14% of all workers, 22% of construction workers).

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<sup>3</sup> This is based on the data for New York State. See below.

<sup>4</sup> <http://www.nlihc.org/pubs/changingpriorities.pdf>, Table 7, BEA IO Use table, 2003. Author's calculations.

<sup>5</sup> All observations, except for the unemployment figures, are limited to workers who are in the labor force) and who earn at least \$1/hour.

**Table 1: Race of Construction Workers**

	White Only	Black Only	American Indian, Alaskan Native Only	Asian Only	Hawaiian/Pacific Islander Only	White- Black	White- AI
First Line Supervisors	93%	7%	0%	0%	0%	0%	0%
Carpenters	87%	10%	0%	2%	0%	1%	1%
Construction Laborers	71%	20%	0%	8%	1%	1%	0%
Electrician	90%	9%	0%	2%	0%	0%	0%
Pipelayers, plumbers, pipefitters, and steamfitters	83%	15%	1%	1%	0%	0%	0%
Other	83%	13%	1%	3%	0%	0%	1%
Construction Occupations Total	83%	13%	0%	3%	0%	0%	0%
<b>All Occupations Total</b>	<b>76%</b>	<b>16%</b>	<b>0%</b>	<b>7%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>

Source: CPS 2004-2006.

Note: Workers in the labor force (PREXPLF=1,2) and a wage of at least \$1.

**Table 2: Construction Workers by Hispanic Origin**

	Non- Hispanic	Hispanic
First Line Supervisors	88%	12%
Carpenters	78%	22%
Construction Laborers	64%	36%
Electrician	82%	18%
Pipelayers, plumbers, pipefitters, and steamfitters	89%	11%
other	79%	21%
Construction Occupations Total	78%	22%
<b>All Occupations</b>	<b>86%</b>	<b>14%</b>

Source: CPS 2004-2006 CPS

Blacks are under represented among all occupation except among laborers. Hispanics are over represented in all occupations except among supervisors and plumbers.

### Age and Children

Table 3 shows the median wage of construction workers and the proportion of workers who are parents of children below the age of 18.

**Table 3: Age and Presence of Children**

	Median Age	With Children
First Line Supervisors	43	46%
Carpenters	35	34%
Construction Laborers	36	31%
Electrician	40	44%
Pipelayers, plumbers, pipefitters, and steamfitters	39	29%
Other	38	35%
Total	38	35%
CPS 2004-2006		

### Education

As Table 4 shows, the vast majority of construction workers have at least a high school degree.

**Table 4: Educational Attainment**

	Less Than HS	High School Grad- Diploma Or Equiv (ged)	Some College But No Degree	Associate Degree- Occupation/ Vocation	Associate Deg.- Academic Program	Bachelor's Degree	Master's Degree
First Line Supervisors	16%	47%	15%	6%	5%	8%	2%
Carpenters	20%	47%	12%	2%	5%	10%	4%
Construction Laborers	36%	36%	11%	4%	2%	7%	2%
Electrician	3%	49%	22%	10%	9%	7%	0%
Pipelayers, plumbers, pipefitters, and steamfitters	16%	45%	17%	15%	6%	1%	0%
Other	19%	50%	15%	4%	3%	7%	2%
Total	20%	46%	15%	5%	4%	7%	2%

Source: CPS 2004-2006.

## **Unionization**

As Table 5 shows, only a minority of construction workers belong to unions, although this low rate among construction workers is still higher than the rate of unionization among other workers.

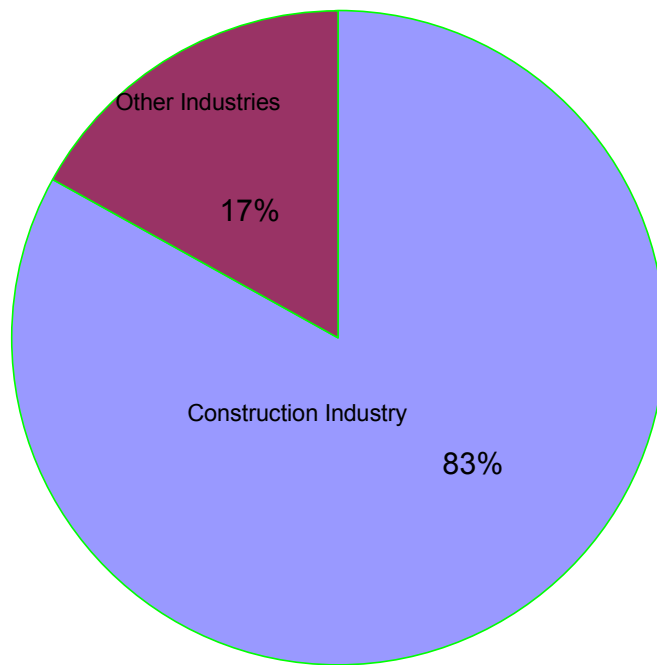
**Table 5: Unionization Rates**

	Unionization Rate
First Line Supervisors	31%
Carpenters	32%
Construction Laborers	19%
Electrician	58%
Painters, construction and maintenance	19%
Pipelayers, plumbers, pipefitters, and steamfitters	53%
Other Construction Occupations	39%
Construction Occupations Total	35%
<b>All Occupations</b>	<b>24%</b>

Source: CPS 2004-2006 ORG.

## **Construction Workers and the Construction Industry**

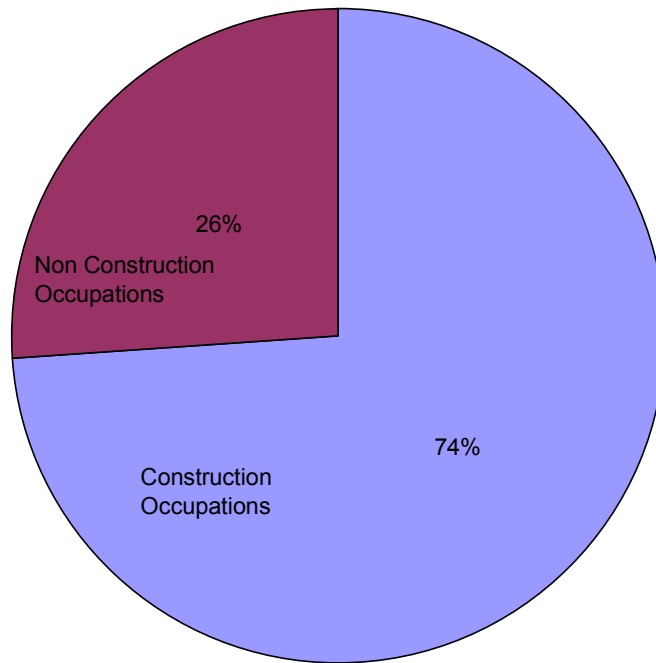
Although the construction industry is by far the largest employer of construction workers, as Figure 4 shows, a significant proportion of them, 17%, work in other industries. Since no other industry engage in massive scale construction work (the government hires contractors to do its construction work), most of the construction workers who work outside the industry probably do maintenance work.



Source: CPS 2006

**Figure 4: Construction Occupations and the Construction Industry**

In a similar fashion, a significant proportion, 26%, of workers in the construction industry are in support occupations but do not do actual construction work themselves.

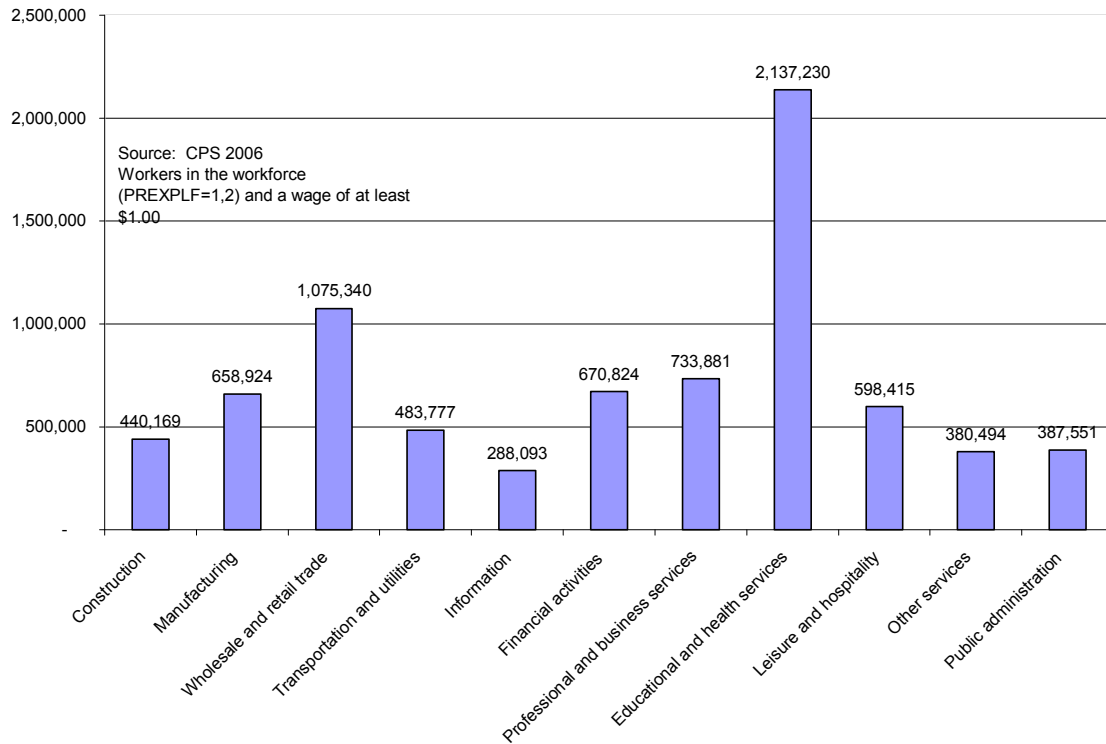


Source: CPS 2006.

**Figure 5: Construction and Non-Construction Occupations in the Construction Industry**

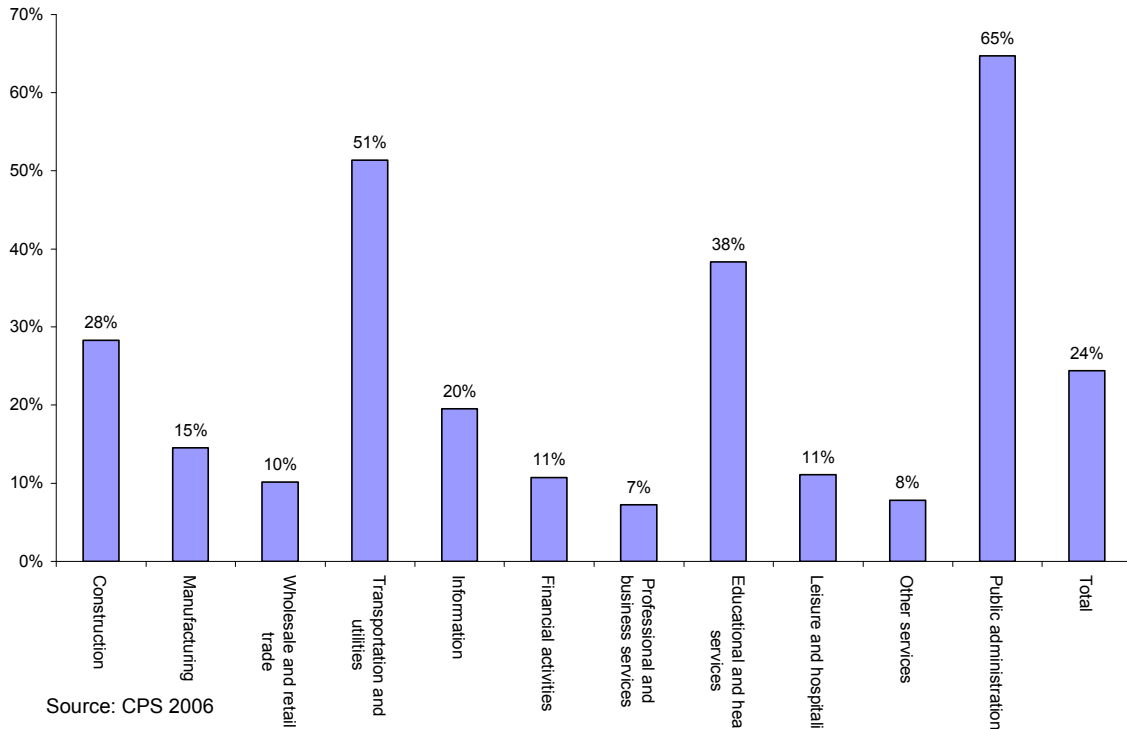
#### **4. The Construction Industry in the State Economy**

About 6%, or 1 in 18, New Yorkers work in the construction industry. As Figure 6 shows, construction is a significant but a relatively small industry in the state.



**Figure 6: Employment by Industry, New York State, 2006**

Figure 7 depicts union membership by industry. At 28%, the rate of unionization in the construction industry is well below the rate of unionization among government employees, transportation and utility workers and educational and health services workers. At the same time construction workers are more likely to be unionized than workers in manufacturing or in the wholesale and retail industries.

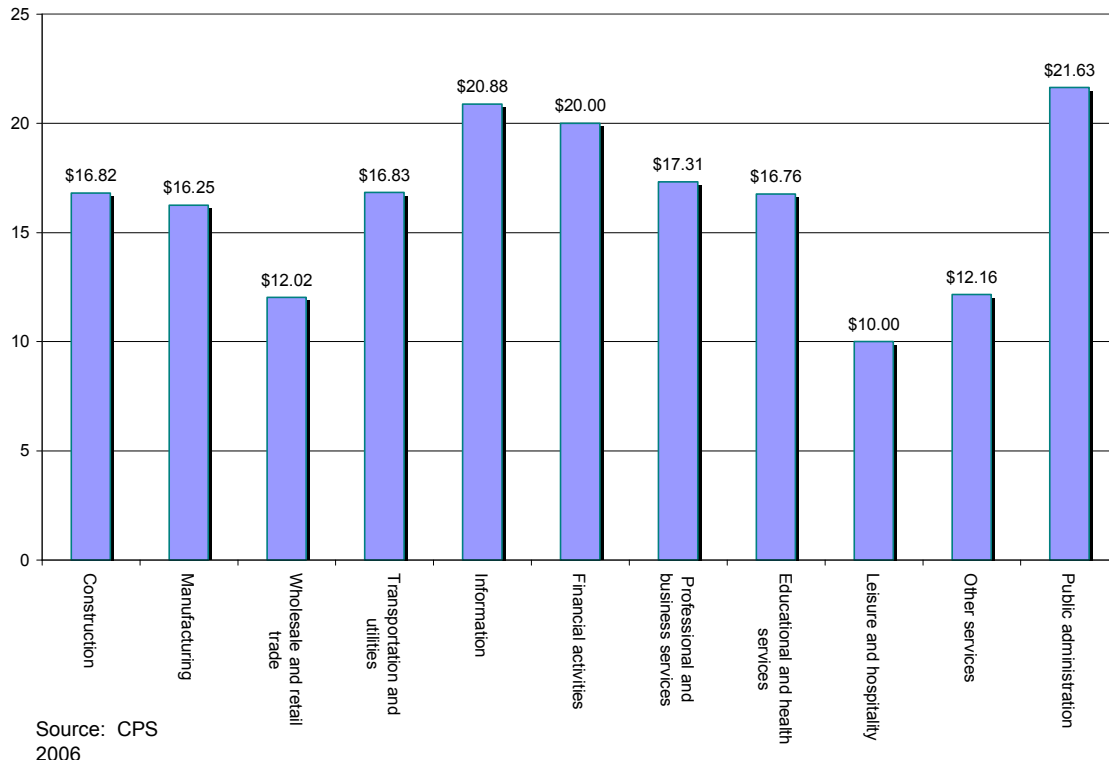


**Figure 7: Unionization by Industry, New York State, 2006**

What explains these differences? The role of the government in each of these industries probably holds the key. Unlike some private employers, the government does not interfere with the rights of its own workers to organize. Furthermore, it also often demands lawful behavior of its contractors. This is probably the reason that the rate of unionization is higher among government workers as well as among workers in the utilities industries. As was shown the government is also an important client of the construction industry, and this is perhaps why the rate of unionization in construction is in the middle range. Workers in the retail and wholesale industry, on the other hand, typically have to fend for themselves when they try to organize, and this is perhaps why their rate of unionization is so much lower.

As Figure 8 shows, wages in the construction industry are comparable to wages in manufacturing, transportation and utilities, and in educational and health services. They

are substantially higher than wages in the wholesale and retail industry and they are substantially lower than wages in the information, financial services and public administration industries.



**Figure 8: Median Wage by Industry, New York State, 2006**

## **5. Wages of Construction Workers**

Information about workers’ wages is available from two sources: from a survey of employers (Occupational Employment Statistics) and from the survey of workers (Current Population Survey) already used earlier in this report. Table 6 reports the wages from both surveys. As can be seen from the table, the wages that employers’ survey

yields are significantly higher than the wages that were reported by workers in their survey. The employers' survey tells us that they pay construction laborers a median wage of \$18, while the workers' survey tells us that they get a median wage of only \$13. According to the employers they pay carpenters a median wage of \$21, whereas the median wage for the carpenters in the workers' survey is only \$16. For electricians the respective numbers are \$26 and \$20, and for plumbers the respective numbers are \$28 and \$19.<sup>6</sup> For some occupations, such as roofers, the workers report higher wages than the employers do. But these are occupations with relatively few workers and, therefore, few observations in the data sets. The estimated wages for these occupations are therefore not reliable, and we correct for this problem in the rest of the report by grouping the small occupations into "other occupations." For all construction occupations together the median wage that employers report is \$22, compared to \$17 that the workers in the survey report.

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<sup>6</sup> We ignored the few pipe layers in this comparison because the employees survey does not include them and their number is small.

**Table 6: Wages, Workers and Employers Surveys**

Construction Occupations  
Wages  
New York State, 2004-2006

	<u>Workers' Survey</u>			<u>Employer's Survey</u>			Diff. Medians
	Number	Mean	Median	Number	Mean	Median	
Construction laborers	70,338	\$ 16.13	\$ 13.16	45,340	\$19.53	\$18.12	38%
Carpenters	59,379	\$ 19.56	\$ 16.00	48,240	\$22.47	\$20.68	29%
Electricians	41,029	\$ 23.45	\$ 20.26	36,790	\$28.38	\$25.70	27%
Pipelayers, plumbers, pipefitters, and steamfitters	28,283	\$ 21.11	\$ 19.23	26,680	\$28.78		18% (means)
<i>Pipelayers</i>				890	\$20.48	\$19.02	N/A
<i>Plumbers, Pipefitters, and Steamfitters</i>				25,790	\$29.06	\$27.87	N/A
Painters, construction and maintenance	26,533	\$ 18.34	\$ 14.57	12,390	\$20.90	\$19.40	33%
First-line supervisors/managers of construction trades and extraction trades	25,649	\$ 25.87	\$ 22.76	27,120	\$33.13	\$30.67	35%
Brickmasons, blockmasons, and stonemasons (47- 2020)	11,632	\$ 18.51	\$ 15.00	7,100	\$24.18		
Brickmasons, blockmasons				6,380	\$24.45	\$22.72	51%
Stonemasons				720	\$21.84	\$19.56	N/A
Drywall installers, ceiling tile installers, and tapers (47-	7,738	\$ 17.77	\$ 15.00	4,920	\$25.69		
Drywall installers, ceiling tile installers				4,100	\$26.10	\$26.39	76%
Tapers				820	\$23.64	\$21.39	N/A
Construction and building inspectors (47-4011)	7,201	\$ 20.55	\$ 19.76	5,110	\$23.75	\$23.17	17%
Helpers, construction trades (47-3010)	6,859	\$ 14.70	\$ 10.52	16,910	\$14.07		N/A
<i>Helpers--Carpenters</i>				6,870	\$13.12	\$11.93	N/A
<i>Helpers--Electricians</i>				3,450	\$15.65	\$15.62	N/A

<i>Helpers--Painters, Paperhangers, Plasterers, and Stucco Masons</i>				470	\$16.38	\$12.97	N/A
<i>Helpers--Pipelayers, Plumbers, Pipefitters, and Steamfitters</i>				4,820	\$14.81	\$13.81	N/A
<i>Helpers--Roofers</i>				660	\$10.72	\$9.62	N/A
<i>Helpers, Construction Trades, All Other</i>				640	\$12.08	\$10.39	N/A
Carpet, floor, and tile installers and finishers (47- 2040)	6,871	\$ 17.90	\$ 17.56				N/A
<i>Carpet Installers</i>				1,260	\$21.17	\$17.43	N/A
<i>Floor Layers, Except Carpet, Wood, and Hard Tiles</i>				n/a	\$16.94	\$15.35	N/A
<i>Tile and Marble Setters</i>				2,050	\$24.78	\$21.63	N/A
Sheet metal workers	7,671	\$ 19.44	\$ 16.00	6,770	\$26.12	\$25.54	60%
Structural iron and steel workers	6,503	\$ 23.64	\$ 20.00	3,810	\$33.10	\$34.16	71%
Elevator installers and repairers	3,497	\$ 28.45	\$ 25.00	2,790	\$30.19	\$31.12	24%
Paving, Surfacing, and Tamping Equipment Operators				1,720	\$23.70	\$23.73	N/A
Pile-Driver Operators				n/a	\$30.37	\$31.38	N/A
Operating engineers and other construction equipment operators	15,732	\$ 23.53	\$ 21.07	13,090	\$26.64	\$24.08	14%
Roofers	8,409	\$ 15.89	\$ 15.08	4,400	\$19.16	\$17.05	13%
Glaziers	2,642	\$ 15.51	\$ 18.00	2,700	\$20.06	\$17.98	0%
Hazardous materials removal workers	4,159	\$ 20.55	\$ 17.56	3,840	\$23.83	\$24.75	41%
Reinforcing iron and rebar workers	784	\$ 47.14	\$ 51.43	1,110	\$29.18	\$28.77	-44%
Plasterers and stucco masons	2,723	\$ 19.08	\$ 17.12	1,770	\$25.51	\$24.47	43%
Cement masons, concrete finishers, and terrazzo workers	598	\$ 15.18	\$ 10.54	5,890	\$22.29	\$20.75	97%
Insulation workers	963	\$ 19.02	\$ 22.66	940	\$25.14	\$22.07	-3%
Fence erectors	2,244	\$ 11.71	\$ 12.00	1,320	\$13.64	\$12.62	5%
Highway maintenance workers	6,179	\$ 18.28	\$ 13.66	15,740	\$16.41	\$15.86	16%

Rail-track laying and maintenance equipment operators	924	\$ 20.10	\$ 24.03	720	\$20.69	\$20.70	-14%
Other extraction workers	314	\$ 12.50	\$ 12.50	520	\$18.21	\$16.93	35%
Miscellaneous construction and related workers	250	\$ 12.97	\$ 12.97				
Construction and Related Workers, All Other				860	\$17.13	\$15.17	N/A
Earth Drillers, Except Oil and Gas				700	\$19.03	\$16.83	N/A
Explosives Workers, Ordnance Handling Experts, and Blasters				n/a	\$20.63	\$20.28	N/A
Continuous Mining Machine Operators				n/a	\$13.33	\$13.43	N/A
Mine Cutting and Channeling Machine Operators				n/a	\$15.32	\$15.31	N/A
Rock Splitters, Quarry Helpers--Extraction Workers				250	\$17.12	\$14.98	N/A
				590	\$16.36	\$16.91	N/A
							N/A
Construction and Extraction Occupations	356,937	\$ 19.82	\$ 16.84	308,170	\$23.90	\$21.86	30%

Sources: Current Population Survey and Occupational Employment Statistics, 2004-2006, pooled data.  
Note: 2004 and 2005 wage were adjusted to 2006 wages by the wage increase for all construction and extraction occupations, \$2006/\$2004 and \$2006/\$2004 respectively.

Why are wages higher in the employers' survey? Part of the explanation can be attributed to a difference in perspectives. The workers' survey probably captures more of those who are self-employed. In addition workers and employers may classify occupations differently. A worker may classify herself as a carpenter, for instance, whereas the employer may classify her as a helper or a laborer. Or a worker who sometimes helps a carpenter and at other times helps a painter may classify herself as a "construction laborer," whereas her different two employers would classify her as a "carpenter helper" and a "painter helper" respectively. This is, no doubt, part of the reason that employers report a smaller number of "construction laborers" and a larger

number of helpers than the workers themselves do. But the fact that some employers may have an incentive to report higher wages than they actually do cannot be ignored. Employers must comply with labor contracts and the prevailing wage law, and the higher wages in their survey may be evidence of non-compliance by some of them. The employee's survey is therefore more reliable and the rest of this report relies, therefore, on it.

### **Unionization and Wages**

Table 7 shows wages and unionization rates. Two occupations, electrical work and plumbing, require licenses to practice them, and this is indicated in the table as well. The last row in the table shows the correlation between the rate of unionization in an occupation and the wage. Supervisors were excluded from the correlation because supervisors are sometimes not eligible to join unions. The correlation between the average and median wage and the rate of unionization is close to 1, which means that a high wage and a high rate of unionization go hand in hand. Of course, correlation does not mean causation. In addition to unionization there are other factors that make workers strong. For example, while electricians and plumbers have the highest rate of unionization, these occupations also require licenses. Nevertheless, given how high the correlation is, there is little doubt that unionization has a positive effect on wages.

**Table 7: Wages and Unionization Rates**

	Mean	Median	Unionization Rate
First Line Supervisors	\$ 25.87	\$ 22.76	31%
Carpenters	\$ 19.56	\$ 16.00	32%
Construction Laborers	\$ 16.13	\$ 13.16	19%
Electrician	\$ 23.45	\$ 20.26	58%
Painters, construction and maintenance	\$ 18.34	\$ 14.57	19%
Pipelayers, plumbers, pipefitters, and steamfitters	\$ 21.11	\$ 19.23	53%
Other Occupations	\$ 19.57	\$ 17.12	39%
Total	\$ 19.82	\$ 16.84	35%
Correlation with Unionization (without supervisors)	0.92	0.98	

Source: CPS 2004-2006 ORG.

Table 8 compares the wages of union and non-union members within occupations. As the table shows, union members earn significantly higher wages than non-members do. Furthermore, the correlation between the rate of unionization of an occupation and the wages of non-union members is positive, if small. This suggests that workers may benefit from the unionization of their occupation even when they themselves are not unionized.

**Table 8: Wage by Union Membership**

	Mean		Median		Unionization Rate
	Yes	No	Yes	No	
First Line Supervisors	\$ 29.68	\$ 24.12	\$ 26.44	\$ 20.15	31%
Carpenters	\$ 24.20	\$ 17.47	\$ 23.50	\$ 15.00	32%
Construction Laborers	\$ 19.60	\$ 15.33	\$ 17.71	\$ 12.50	19%
Electrician	\$ 28.43	\$ 16.94	\$ 25.00	\$ 13.70	58%
Painters, construction and maintenance	\$ 24.00	\$ 17.08	\$ 23.53	\$ 13.75	19%
Pipelayers, plumbers, pipefitters, and steamfitters	\$ 24.04	\$ 18.02	\$ 20.26	\$ 15.79	53%
other	\$ 24.39	\$ 16.70	\$ 21.55	\$ 15.00	39%
Total	\$ 24.91	\$ 17.19	\$ 22.66	\$ 14.75	35%
Correlation with unionization rate (without supervisors)	0.73	0.53	0.34	0.51	

Source: CPS 2004-2006 ORG

As was shown in Figure 3, construction work is seasonal, and therefore hourly wages cannot simply be translated to annual incomes. Further analysis is required to estimate the annual income of construction workers, and to determine whether seasonality affects union and non-union workers differently.

### **Upstate and Downstate: Two Labor Markets?**

It is often argued that New York is divided economically between Upstate and Downstate. There is no doubt that this division applies to the financial industry. But does it also apply to the labor market? To examine this question we divided the data between Downstate counties: New York City with its five counties, Suffolk, Nassau, Westchester and Rockland, and Upstate, which are all the rest. (There is little doubt that many of the workers who work in New York City do not live there, and this is why when it come to construction dividing the state between workers who live in the city and those

who don't would not be meaningful.) Are there differences in the wages of construction workers between these two regions? Table 9 depicts this comparison, and as the table indicates, except for supervisors and plumbers, none of the differences between the wage means are statistically significant at the 10% level of confidence.

**Table 9: Upstate and Downstate Wages  
New York State  
2006**

		<u>N</u>	<u>Mean</u>	<u>Median</u>
First Line Supervisors	Downstate	16,198	\$ 27.16	\$ 24.24
	Upstate	9,451	\$ 23.67	\$ 20.26
Carpenters	Downstate	37,148	\$ 19.73	\$ 15.81
	Upstate	22,231	\$ 19.27	\$ 16.86
Construction Laborers	Downstate	53,928	\$ 15.84	\$ 12.70
	Upstate	16,409	\$ 17.05	\$ 14.73
Electrician	Downstate	28,190	\$ 23.33	\$ 20.46
	Upstate	12,839	\$ 23.71	\$ 20.00
Pipelayers, plumbers, pipefitters, and steamfitters*	Downstate	18,074	\$ 22.69	\$ 20.25
	Upstate	10,209	\$ 18.30	\$ 16.00
other	Downstate	78,008	\$ 19.86	\$ 16.00
	Upstate	54,251	\$ 18.55	\$ 17.39
Total	Downstate	231,546	\$ 20.06	\$ 16.00
	Upstate	125,391	\$ 19.38	\$ 17.56
Source: CPS 2004-2006 ORG		356,937		
* Statistically significant difference between means (10% level). Singnificance test of the unweighted data.				

Unionization rates are 34% in Downstate and 36% in Upstate, but the difference between these figures is also not statistically significant. We conclude, therefore, that for the

construction labor market, the division of Upstate/Downstate is ambiguous. For some occupations wages are higher in the downstate market, but this is not generally the case. Unionization rates are 34% in Downstate and 36% in Upstate, but the difference between these figures is also not statistically significant.

# The Prevailing Wage Law

## **6. Federal Law: The Davis-Bacon Act**

By federal law, workers who work on a construction project that receives US government funds must be paid the “prevailing wage” for their work. The law, which is known as the Davis-Bacon Act, was passed in 1931 and was subsequently amended several times. It was named after its Republican sponsors, James Davis, a Senator from Pennsylvania, and Representative Robert L. Bacon of Long Island, New York. According to the US Department of Labor:

The Davis-Bacon Act, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

In addition to the Davis-Bacon Act itself, Congress has added prevailing wage provisions to approximately 60 statutes which ***assist construction projects through grants, loans, loan guarantees, and insurance*** [emphasis added]. These "related Acts" involve construction in such areas as transportation, housing, air and water pollution reduction, and health. If a construction project is funded or assisted under more than one Federal statute, the Davis-Bacon prevailing wage provisions may apply to the project if any of the applicable statutes requires payment of Davis-Bacon wage rates.

It is important to note that that the applicability of the federal prevailing wage law is determined by who funds it: A project is subject to the law if it receives federal financial assistance. As will be shown below, this is very different from the way that New York State determines the applicability of the prevailing wage law.

## ***Definition of the Prevailing Wage in the Federal Law***

According to the law:

The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.<sup>7</sup>

The Federal prevailing wage is posted at: <http://www.wdol.gov/dba.aspx>

## ***Exemptions***

The most important exemption from the Davis-Bacon Act is the one in the National Affordable Housing Act, Section 286(a) (HOME).<sup>8</sup> This law exempts the construction of affordable housing from the payment of the prevailing wage if the financial assistance from the federal government applies to no more than 11 units. Furthermore, if a project receives financing through different government contracts, each of these contracts may be applied to a different set of 11 units within the same project, and each would then be exempt. HUD explains this situation as follows:

First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)

Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

What the law does not explain is how a “project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units” can be

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<sup>7</sup> [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_1/29CFR1.2.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_1/29CFR1.2.htm)

<sup>8</sup> [http://www.hud.gov/offices/olr/olr\\_foa.cfm](http://www.hud.gov/offices/olr/olr_foa.cfm)

distinguished from a single project that has been broken “into multiple contracts for the purpose of avoiding Davis-Bacon.”

## ***Enforcement Procedures***

The first step in enforcing the law is informing workers of the wage that they are entitled to. By law, an employer who is subject to the prevailing wage law must display a poster that informs the workers of these wages at the work place. (The poster is available at: <http://www.dol.gov/esa/regs/compliance/posters/davis.htm> and is shown in the appendix.)

In principle, the Wage and Hours Division of the US Dept. of Labor also conducts unannounced visits to workplaces to investigate whether employers comply with the law. According to the DOL, it conducts investigations in the following manner:<sup>9</sup>

The WHD does not require an investigator to previously announce the scheduling of an investigation, although in many instances the investigator will advise an employer prior to opening the investigation. The investigator has sufficient latitude to initiate unannounced investigations in many cases in order to directly observe normal business operations and develop factual information quickly.

- Interviews with certain employees in private. The purpose of these interviews is to verify the employer’s payroll and time records, to identify workers’ particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Interviews are normally conducted on the employer’s premises. In some instances, present and former employees may be interviewed at their homes or by mail or telephone.
- When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. The employer will be told whether violations have occurred and, if so, what they are and how to correct them. If back wages are owed to employees because of minimum wage or overtime

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<sup>9</sup> <http://www.dol.gov/esa/regs/compliance/whd/whdfs44.htm>

violations, the investigator will request payment of back wages and may ask the employer to compute the amounts due.

In addition to the US DOL the enforcement of the Davis-Bacon act is also the responsibility of the agencies that award construction contracts. Major among these is HUD. Like the DOL, HUD also recognizes the need to conduct on-site-visits, and it requires it of the states in its publication “Making Davis-Bacon Work.”<sup>10</sup> HUD states:

DOL Davis-Bacon regulations require contracting agencies to include in their enforcement protocol on-site interviews with the laborers and mechanics performing the contract or project work. On-site interviews with the workers provide another perspective of the employer's performance with respect to labor standards, a means to test the accuracy of the payroll reports. More importantly, perhaps, the interviewer can provide a firsthand account of his or her observations on-site including the number of workers on-the-job or in a particular crew and the duties they were performing.<sup>11</sup>

Nevertheless, even though on-site interviews are crucial, HUD does not conduct these interviews for all projects.

HUD recognizes that on-site interviews are an invaluable tool in Davis-Bacon enforcement and that it is a resource that should be used to its greatest advantage. Accordingly, we strongly encourage Contract Administrators to target on-site interviews to projects, contracts, employers where violations are suspected and the interview data can be most useful. *Targeting* may mean that *no* interviews are conducted on certain contracts where remote monitoring (such a payroll reviews) indicates full compliance so that more interviews may be conducted where problems are indicated. *Targeting* does not mean closing our eyes but, rather, focusing our sights on potential violations.

This procedure creates a problem, however, because what raises the suspicion of an agency is often a complaint by a worker. But if the employer fails to post the prevailing wage posters at the work site the workers would have no way of knowing that they are entitled to the prevailing wage and will not complain. And this is why there is no

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<sup>10</sup> [http://www.hudclips.org/sub\\_nonhud/cgi/pdfforms/4813-LR.pdf](http://www.hudclips.org/sub_nonhud/cgi/pdfforms/4813-LR.pdf)

<sup>11</sup> [http://www.hud.gov/offices/olr/olr\\_foa.cfm](http://www.hud.gov/offices/olr/olr_foa.cfm)

alternative to the on site interviews: They are the only reliable way to verify that workers know their rights and are receiving the pay to which they are entitled.

## ***Penalties***

The only penalty for willfully paying workers less than the prevailing wage is a three years debarment from doing work for the government. (Paying the back wages is not a penalty.) Workers are not entitled to compensatory damages. Regarding debarment the law states:

Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in Sec. 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in Sec. 5.1.<sup>12</sup>

The law does not explain how a contractor can underpay his workers except for “willfully.” It appears that only a contractor who continued to violate the law after having been caught would fall under this category. If so, the law encourages contractors to take a chance with violations. If they manage to get away with it they win, and if they get caught they don’t lose.

## ***Enforcement Statistics***

The Wage and Hours division of the US DOL publishes detailed statistics of its enforcement of many provisions of the labor law but it provides no statistics at all

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<sup>12</sup> [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_5/29CFR5.12.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_5/29CFR5.12.htm)

regarding the enforcement of the prevailing wage law. Nor does HUD. A Freedom of Information Law (FOIL) request provided some data about prevailing wage enforcements for the period 1/1/2000-10/10/2006. Based on these data the annual figures were as follows:

**Prevailing Wage Investigations  
New York State  
US Dept. of Labor  
2000-2006**

Number of Projects Subject to Prevailing Wage Law	Investigations Per Year	Violations discovered	Initiated by Complaint	Routine Inspection	Workers affected	Back Wage Per Worker	Compensatory Penalties
US DOL has no information	55	28	Data Refused	Data Refused	226	\$1,920	\$0

Source: FOIL request.  
Enclosed: DOL response.

Are 55 investigations a year many or few? This depends on how many prevailing wage projects are taking place. But in its response to the FOIL request the US Dept. of Labor states that it does not know how many sites there are that are subject to the prevailing wage law. This response, like the “targeting” that HUD engages in, suggests that all DOL investigations are initiated only as the result of complaints. If the department does not know which sites are subject to the prevailing wage, it could not possibly inspect sites unless there is a complaint. In its response to the FOIL request the DOL states that it would not release the information how many of its investigations are initiated by complaints.

## 7. The New York State Prevailing Wage Law in New York City

According to Article 8 of the labor law of New York State, the prevailing wage law applies to “public works.”

The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined.

### ***Definition of Prevailing Wage***

The prevailing wage in the State Law is the average wage in collective bargaining agreements between private employers and labor organizations, provided that these agreements cover at least 30% of the workforce.<sup>13</sup> Otherwise the wage is the average wage that is established in a survey.<sup>14</sup> Hence the state prevailing wage is not identical to the federal prevailing wage.

In small jurisdictions the prevailing wage is determined by the state commissioner of labor while in large cities it is determined by these cities' Comptrollers.

The "fiscal officer," as used herein, shall be deemed to be, on public work performed by or on behalf of the state or a public benefit corporation or a county or a village, or other civil division of the state, except a city, with a population in excess of one million, the commissioner of labor; and on public work performed by or on behalf of a city with a population in excess of one million, the Comptroller or other analogous officer of such city.

In NYC, therefore, the prevailing wage is determined by the City Comptroller.

The prevailing wage schedules for all New York State counties are posted at:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

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<sup>13</sup> [http://www.labor.state.ny.us/workerprotection/publicwork/PW\\_faq2.shtm#2](http://www.labor.state.ny.us/workerprotection/publicwork/PW_faq2.shtm#2). In NYC the prevailing wage is determined by the Comptroller's office.

<sup>14</sup> [http://www.labor.state.ny.us/workforceindustrydata/prevailing\\_wage\\_H1b.shtm](http://www.labor.state.ny.us/workforceindustrydata/prevailing_wage_H1b.shtm)

Unlike the federal law, the state law does not have a standard prevailing wage poster. Nevertheless, the law requires that the wages be posted in the workplace:

The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work project. The prevailing wage schedule must be encased in, or constructed of, materials capable of withstanding adverse weather conditions and be titled "PREVAILING RATE OF WAGES" in letters no smaller than two (2) inches by two (2) inches.<sup>15</sup>

## ***Exemptions***

The state law itself does not permit any exemptions. However, in 1988, in response to a suit by a contractor who thought he should be exempt from paying the prevailing wage, the New York State appellate division ruled that:

Although Labor Law #220 does not define the term “public works,” that term has a generally accepted plain meaning which depends upon the purpose or function of the particular project, and private construction projects, even though financed through industrial development agency bonds are not “public works” projects; moreover, other imaginative financial schemes, including giving tax exemptions to a project, does not transform an essentially private venture into a public one. The public must be a direct beneficiary of the work, and the project in question contemplated no public use of the structure, no public ownership, no public access, and no public enjoyment of what were to become private dwellings. The intent of Private Housing Finance Law article XIX is the promotion of home ownership, and the project in question is not a “public works” project even though it serves a public function, i.e., the rehabilitation of neighborhoods; the instant project is clearly differentiable from public housing projects are fully subsidized and owned by the government.<sup>16</sup>

This is, of course, very different from the federal law that demands that the prevailing wage be paid for any work that is financed by the government. The prevailing wage law has two purposes: To assure that construction work is done by qualified

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<sup>15</sup> <http://www.labor.state.ny.us/workerprotection/publicwork/PWGeneralProvisions.shtml>

<sup>16</sup> 151 Appellate Division Reports, 2d Series, Vulcan Affordable housing Corporation, Respondent, v Thomas F. Hartnett, Commissioner of Labor of the State of New York, Appellant, Third Department, October 12, 1989.

professionals and that the government is not party to the suppression of wages. But if this is the purpose of the law, the test that the court set for when the law applies is inconsistent with it.

Five years after this decision, in 1993, state Assemblymen Calhoun, Acampora, Butler, Casale, Errigo, Kirwan and Townsend introduced a bill to define public works as follows:

“[P]ublic works” shall include any program or project the financing of which is provided, in whole or in part, by any public benefit corporation, public authority, industrial development agency, or any subsidiary thereof.

The bill has never yet left the different committees to which it was referred. In its latest incarnation, 13 years after it was first introduced, it was referred to the labor committee on 1/17/07.

### Fallout from Court Decision

How do the different agencies apply the court’s decision? It is hard to know. The government of New York City does not have a list of construction contracts that shows which contracts are subject to the prevailing wage law, nor does the Comptroller, who by law is in charge of enforcing the law. The mayor’s office of contracts, an office whose only mission is to improve the process of contracting by city agencies, does have a list of all the city contracts, but what it does not have is information regarding which contracts the prevailing wage applies to.

While the Comptroller is in charge of enforcing the law, he does not determine which contracts are subject to the law. Therefore when, according to the Comptroller, “questions have arisen as to whether HPD [Housing Preservation and Development]

construction contractors must pay prevailing wages and benefits to their workers,” the Comptroller did not answer this question himself but instead he referred it to HPD.<sup>17</sup> According to the agency it does not apply the prevailing wage law to the following programs: Home Works, Neighborhood Home, New Homes, Small Buildings Loan, Small Homes Loan, Store Works, and Vacant Building. The Comptroller reported the agency’s response and issued no opinion regarding its practices.

How do other agencies apply the law? The Comptroller did not investigate this question and therefore FOIL requests for this information were sent the agencies with the largest construction budgets. The construction budgets of the city agencies are shown in Table 10.

**Table 10: Government Contracts**  
**Construction Services Contracts**  
 NYC  
 2006

1	Dept. of Design and Construction	\$639,373,875
2	Dept. of Environmental Protection	\$290,885,142
3	Dept. of Transportation	\$210,295,597
4	Dept. of sanitation	\$200,813,868
5	Dept. of Parks and Recreation	\$156,115,839
6	Dept. of City Wide Administrative Services	\$39,865,771
7	Dept. of Housing Preservation and Development	\$14,333,119
8	Dept. of Homeless Services	\$8,107,820
9	Dept. of Corrections	\$6,560,606
10	Fire Department	\$6,288,357
Top 10	Sub-total	\$1,572,639,995
	Other Agencies	\$14,110,121
	Total	\$1,586,750,116

Source: NYC, Agencies Procurement Indicators, 2006

[http://www.nyc.gov/html/selltonyc/pdf/procurement\\_indicators\\_2006.pdf](http://www.nyc.gov/html/selltonyc/pdf/procurement_indicators_2006.pdf)

<sup>17</sup> A FOIL request to the Comptroller resulted in no written response but an invitation to an interview on Oct. 11, 2006, with Jeff Elmer, Assistant Comptroller, and Martin Moran, Bureau Chief for labor law. The quote is from an untitled and undated document given during that interview.

The FOIL requests went to the departments of Design and Construction, Environmental Protection, Transportation and Sanitation. Their responses were uniformly ambiguous. The questions were straightforward but the answers were not. According to the response from the Department of Citywide Administrative Services, “Although the statute is entitled the ‘Freedom of Information Law,’ the statute places no obligation on public agencies to provide information to requesters, i.e., the title is a misnomer. Instead, the obligation imposed on public agencies is to provide copies of existing records that are responsive to those described in a FOIL request... The Dept. of Design and Construction has no existing records with answers to the questions you pose.”

The response of the Dept. of Sanitation was similar: “Please be informed that under FOIL a government agency is authorized to disclose documents only. Accordingly, please identify documents you are pursuing.” This response led to a new FOIL request that raised the following issue: “How can anybody but the employees in your office [sanitation] possibly know the internal names of these documents?” But the Dept. of Sanitation persisted: “The Department remains unable to comply with your FOIL request as there is no description of the requested documents.” The other two departments responded by phone calls and also supplied no information.

We can only conclude that either the city agencies don’t keep lists of the contracts that are subject to the prevailing wage law, or they are unwilling to provide these lists to the public. In either case the government refuses to divulge which of its contracts is subject to the prevailing wage law. As a result, if employers fail to inform workers that the prevailing wage law applies to them, workers have no way of finding this information on their own.

The Comptroller may try to enforce the requirement that contractors post signs informing workers when the prevailing wage applies, but with a small staff (which is why the Comptroller does not investigate unless there is a complaint; see below) and no list of contracts to which the law applies, he doesn't. It is reasonable to suspect, therefore, that a significant number of workers who are eligible to earn the prevailing wage are unaware of it. As was seen in the first part of this report, the wages that employers say they pay are significantly higher than the wages that workers actually receive, and violations of the prevailing wage law may be part of the reason. Effective enforcement of the prevailing wage law should require that the government make public the information about which projects are subject to the law.

### ***Penalties***

The penalty for a violation of the prevailing wage law may be up to 25% of the underpayment, in addition to interest.<sup>18</sup> In addition, a contractor who willfully underpays his or her workers two times within a five-year period can be debarred from getting additional contracts for a period of five years.<sup>19</sup> The caveat that applies to “willful” violations under the federal law applies also to the state law. This qualification means that a contractor who violates the law and is willing to pay back wages when caught has nothing to risk. This loophole encourages violations.

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<sup>18</sup> Section 220-B.

<sup>19</sup> Ibid.

## **Enforcement**

To improve compliance with the prevailing wage law, in October of 2005 Mayor

Bloomberg issued Executive Order #73. According to the order

If a significant discrepancy in price (the greater of 10% or \$300,000) occurs between the apparent low bid and the next lowest one, agencies must obtain detailed information from the low bidder and must conduct research to be certain that the services can (and will) be delivered with the workers on that contract, and on any affected subcontracts, paid as they are entitled, according to the prevailing wage schedules mandated by New York State Labor Law. Under Executive Order 73, before awards can be made to such bidders, MOCS must approve the agencies' due diligence efforts on prevailing wage compliance.<sup>20</sup>

To date this type of due diligence did not uncover any contractor who submitted a bid that was not sufficiently high to pay the workers the prevailing wage.

Does NYC routinely inspect its project for compliance with the prevailing wage law or are inspections only initiated by complaint? The Comptroller only investigates when there is a complaint.<sup>21</sup> But in addition to the Comptroller agencies also police their own contractors and when they discover a violation they refer it to the Comptroller. Do they inspect their projects for compliance?

Perhaps the biggest case of underpayment under the prevailing wage law that was ever discovered in NYC was in contracts for the New York City Housing Authority. Between 2000 and 2004, over a period of five years, workers were underpaid by \$6.5 million. This violation was discovered not by NYCHA but by two unions, the New York City and Vicinity Labor-Management Corporation and the Greater New York Labor-

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<sup>20</sup> Agency Procurement indicators, 2006.

[http://www.nyc.gov/html/selltonyc/pdf/procurement\\_indicators\\_2006.pdf](http://www.nyc.gov/html/selltonyc/pdf/procurement_indicators_2006.pdf)

<sup>21</sup> A FOIL request regarding this and other questions resulted in no written response but an invitation to an interview with Jeff Elmer, Assistant Comptroller, and Martin Moran, Bureau Chief for labor law. Elmer and Moran said they had no statistics regarding how many or even whether routine inspection, not initiated by complaint, ever took place. The Comptroller's first newsletter indicates that the Comptroller only investigates complaints.

Employers Cooperation and Education Trust. The fact that the violation festered for so long is a direct result of the lack of inspections; as early as 2001 the newsletter of the tenants of NYCHA warned that because NYCHA does not investigate compliance with the prevailing wage law on the site, violations can go undetected.<sup>22</sup>

The Mayor Office of Contract requires agencies to evaluate the performance of their construction contractors annually. The evaluation form, included in the appendix, contains many articles about compliance. But compliance with the prevailing wage law is not one of them. The evaluation form does not even indicate whether the work is subject to the prevailing wage law.

### ***Enforcement Statistics***

In 2006 the Comptroller's office oversaw the payment by contractors of \$5,002,082 of back wages. This is .3% of all the construction projects in the city. In addition, the Comptroller assessed \$414,950 in penalties. The back wages are among the highest ever collected in any one year, and the penalties are actually the highest.

## **8. Recommendation**

There is no doubt that current Comptroller takes his responsibility of enforcing the prevailing wage law very seriously. The fact remains, however, that his enforcement is complaint driven. As was shown above, the most effective way to enforce the law is to have routine inspections of construction sites that are subject to the law. This would require a much larger staff than the Comptroller has at his disposal. Given that for the

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<sup>22</sup> TenantNet, Public Housing Spotlight on NYCHA, Issue 83, April 26, 2001.  
<http://www.tenant.net/nycha/pub-hous/pub-hous-83.html>

foreseeable future the enforcement of the prevailing wage will continue to be complaint driven, it is important to make it easier for workers who are underpaid to know their rights and stand for them. The following steps may be useful to achieve this goal.

1. The Mayor's Office of Contracts should have a list of all construction contracts; this list should include the address of the site of each project, whether it is subject to the prevailing wage law, and should be available on the internet. This would permit the workers themselves to know whether they are entitled to the prevailing wage. It would also permit others, including unions and interested taxpayers, to inform workers about their eligibility and to monitor work sites and determine whether the contractor has posted the prevailing wage posters. (The address should be included in the list because workers may not know the name that the city has given to the project they are working on.)

2. The School Construction Authority requires workers to sign a document that states the pay they have received. This serves to inform the workers about the pay they are entitled to, and the form contains also the number of a complaint hotline. All prevailing wage contracts should follow this procedure.

3. Since workers may be reluctant to complain for fear of retaliation, the single most effective way to enforce the prevailing wage law is to establish a meaningful reward for whistle blowers.

4. The Mayor's Office of Contracts should create a standard poster that contractors would have to post at their job site, notifying workers about the wages to which they are entitled.

## Appendix

# NOTICE TO ALL EMPLOYEES



## Working on Federal or Federally Financed Construction Projects

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### **MINIMUM WAGES**

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

### **OVERTIME**

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

# APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

# PROPER PAY

If you do not receive proper pay, contact the Contracting Officer listed below:



or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under:  
**U.S. Department of Labor**  
**Employment Standards Administration**

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