

CTQ-2025-00007

To be submitted by:
CHLOÉ K. MOON

**Court of Appeals
State of New York**

KEVIN T. MADDISON and DAVID WALTON, individually and
on behalf of all other persons similarly situated,

Appellants,

against

COMFORT SYSTEMS USA (SYRACUSE), INC., d/b/a ABJ FIRE
PROTECTION CO., INC.,

Respondent.

**BRIEF FOR AMICUS CURIAE
THE CITY OF NEW YORK**

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March 12, 2026

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INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT

The City of New York submits this brief as amicus curiae to address the certified questions from the U.S. Court of Appeals for the Second Circuit about the enforcement of the prevailing-wage guarantee of Labor Law § 220(3). The City urges the Court to hold that (1) workers may assert a contractual cause of action for prevailing wages even where the parties to a public-works contract have failed to include the statutorily required promise to pay such wages; and (2) such claim is subject to a three-year statute of limitations, regardless of whether the public-works contract states a shorter limitation period.

For over a century, New York law has guaranteed prevailing wages for covered work performed on public-works projects and has required that contracts for public works include a term providing for payment of prevailing wages when due. And this Court has long held that workers may enforce a contractual prevailing-wage provision as third-party beneficiaries of the contract—even where the contracting parties did not intend the provision to apply to their work.

Although the Second Circuit rightly noted in its certification decision that this cause of action does not sit comfortably with ordinary contract principles, it is an important and long-standing means of enforcing

the statutory prevailing-wage guarantee. It would not be sensible to hold that the contracting parties' omission of the statutorily required contract provision deprives workers of a private remedy. This Court has already held that little turns on the contracting parties' subjective intent when they included a prevailing-wage provision in their agreement. The Court should extend the reasoning of that precedent to recognize a cause of action where the contracting parties omitted a prevailing-wage provision entirely. While the City does not lightly support the expansion of liability in the context of public contracting, the highly distinctive text, purpose, and history of Labor Law § 220—together with the Court's precedent—suggest that a cause of action should be available to workers who have performed covered work even when the contract does not contain a promise to pay prevailing wages.

As to the second certified question, the City agrees with the plaintiffs that the limitation period should not be arbitrarily "shortened," and submits that the most appropriate statute of limitations is the three-year period for liabilities imposed by statute under CPLR § 214(2). Although the claim sounds nominally in contract, it fulfills the statutory guarantee of prevailing wages and thus is akin to a statutory liability. A three-year statute of limitations would also align with the limitation period for

administrative enforcement under Labor Law § 220 and provide a more sensible rule than either plaintiffs or defendant has offered.

The City has a strong interest in these questions. The City’s Comptroller is the “fiscal officer” charged with administrative enforcement of prevailing wages in the City. *See* Labor Law § 220(5)(e). In this role, the Comptroller is responsible for determining prevailing-wage rates for the various trades. *Id.* § 220(3); *see Lantry v. State*, 6 N.Y.3d 49, 54 n.5 (2005). And, in proceedings under § 220’s administrative-enforcement mechanisms, *see* Labor Law § 220(8), the Comptroller determines whether work is subject to prevailing wages, and those determinations are entitled to deference. The Comptroller views private suits by workers as an important supplement to administrative enforcement.

Moreover, the City enters into a broad array of contracts—many of which are for public works, while others fall outside of § 220. The City carefully analyzes whether prevailing wages are owed on a contract by assessing whether the project involves public works and whether workers’ duties are “covered work” under the statute. *See De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 N.Y.3d 530, 538 (2013) (establishing a fact-intensive three-prong test for determining whether a contract is for “public works”); *Ramos v. SimplexGrinnell LP*, 24 N.Y.3d 143, 146 (2014) (“*Ramos III*”) (explaining that “covered work” under

§ 220 is “construction, maintenance or repair work”). This inquiry entails the exercise of judgment applied to the specific circumstances of each contract *See, e.g., Vulcan Affordable Hous. Corp. v. Hartnett*, 151 A.D.2d 84, 87 (3d Dep’t 1989) (concluding that project for privately owned low-income housing partially subsidized by public grants was not “a ‘public works’ project even though it serve[d] a public function”).

To be sure, recognizing that workers may pursue contractual claims even where the contract omits a promise to pay prevailing wages means that the City’s contracting partners—or the City or another government entity—may face private litigation where the City has determined in its best judgment that a contract falls outside the scope of Labor Law § 220. *See, e.g., Brown v. A & M Warshaw Plumbing & Heating, Inc.*, Index No. 150040/2024, 2025 N.Y. Slip Op. 35040(U), at *1 (Sup. Ct., N.Y. Cnty. Dec. 29, 2025). Contracting costs and litigation burdens from prevailing-wage claims present real concerns. But the City believes those concerns are best addressed by the courts’ careful adherence to the substantive limits on the obligation to pay prevailing wages; by according appropriate deference to determinations of the fiscal officer, where available; and, as relevant here, by establishing a reasonable and predictable statute of limitations. The answer is not to close the courthouse doors entirely to workers’ claims.

ARGUMENT

POINT I

WORKERS SHOULD HAVE A CONTRACTUAL CAUSE OF ACTION EVEN WHEN THE CONTRACT DOES NOT PROVIDE FOR PREVAILING WAGES

- A. This Court has repeatedly recognized that workers have a contractual cause of action for prevailing wages.**

Throughout the long history of the prevailing-wage guarantee, workers have been able to go to court to enforce it. Starting before the Legislature introduced the current administrative-enforcement mechanism, courts entertained contract actions brought by workers on the basis of the prevailing-wage provision included in a contract for public works. *See, e.g., McCann v. New York*, 52 A.D. 358, 361 (1st Dep’t 1900) (“Contract rights were established ... by virtue of the provision of the act of 1894.”). Since then, this Court has repeatedly confirmed that workers may pursue a private cause of action as third-party beneficiaries of a public-works contract. *See Ramos III*, 24 N.Y.3d at 148; *Wright v. Herb Wright Stucco, Inc.*, 50 N.Y.2d 837, 839 (1980), *reversing for the reasons stated in Wright v. Herb Wright Stucco, Inc.*, 72 A.D.2d 959, 960-

61 (4th Dep't 1979) (Cardamone, J.P. & Hancock, Jr., J., dissenting); *Fata v. S.A. Healy Co.*, 289 N.Y. 401, 406 (1943).¹

Indeed, for almost 60 years after the first prevailing-wage statute was enacted, and for 30 years after the enactment of the concomitant requirement that a prevailing-wage provision appear in every contract for public works, *see* Labor Law § 220(3)(a); Report of the Att'y Gen., Bill Jacket, L. 1894, ch. 622, there was no express statutory means of civil enforcement. Throughout this time, employees enforced their rights against employers through actions asserting “common-law contractual rights.” *See Wright*, 72 A.D.2d at 960-61 (Cardamone, J.P. & Hancock, Jr., J., dissenting).

And after the Legislature added a statutory remedy allowing an interested party to “initiate an administrative enforcement proceeding” for prevailing wages, the Court held that workers retained the right to pursue private contract actions. *Id.* (citing L. 1927, ch. 563); *see Fata*, 289 N.Y. at 406-07; *Wroble v. Shaw Envtl. & Infrastructure Eng'g of N.Y., P.C.*, 166 A.D.3d 520, 521 (1st Dep't 2018) (citing *Cox v. NAP Constr. Co., Inc.*, 10 N.Y.3d 592, 601-04 (2008)). In reaching this result, the

¹ Because this Court in *Wright* affirmed for the reasons stated in the dissenting opinion in the Appellate Division, 50 N.Y.2d 837, we cite that opinion as the opinion of the Court.

Court reasoned that to hold otherwise would “render futile” the statute’s requirement that a prevailing-wage term be included in public-works contracts within its scope. *Fata*, 289 N.Y. at 407; *see also Strong v. American Fence Constr. Co.*, 245 N.Y. 48, 53 (1927) (“A beneficiary of the promise, a laborer or materialman for whose protection it was given, has a right of action for the damages resulting from the breach,”). Because the law’s “entire aim” is to protect workers and “must be construed with the liberality needed to carry out its beneficent purposes,” the Court rejected the contention that the addition of an administrative-enforcement mechanism “had the effect of removing a remedy which workers had heretofore possessed.” *Wright*, 72 A.D.2d at 960. Rather, “the statute simplified and implemented the worker’s remedy by removing some of the burdens that a normal law suit would entail.” *Id.*

More recently, the Court further expanded the contractual right to sue for prevailing wages by holding that where a contract contains a provision agreeing to pay prevailing wages, that provision should be read as an agreement to comply with the law as correctly construed, regardless of whether the parties subjectively believed that certain employees were entitled to prevailing wages. *See Ramos III*, 24 N.Y.3d at 148 (holding that workers engaged in testing and inspection of fire-protection equipment were entitled to prevailing wages, even though the contracting

parties did not believe those workers were covered). This holding reflects the cause of action's increasing focus on vindicating the statutory guarantee of prevailing wages rather than on the subjective intent of the contracting parties.

B. The Court should recognize such cause of action even where the contract does not provide for prevailing wages.

Given the statutory right to prevailing wages and this Court's decisions reaffirming the availability of a private contractual remedy, even where the parties did not intend to pay prevailing wages for the work in question, the City agrees with the plaintiffs that workers should not be prevented from suing simply because the contracting parties omitted the statutorily required provision from their contract. If that were enough to bar a private cause of action, workers could be deprived of a remedy for reasons beyond their control that do not further the worker-protective goals of the statute. *See Walton v. Comfort Sys. USA (Syracuse), Inc.*, 155 F.4th 144, 157 (2d Cir. 2025) (“[I]t would be incongruous to allow a public contractor to avoid ... potential liability by simply ignoring its statutory obligation and omitting the required language from the public works contract”).

Here, the Second Circuit has already concluded that the plaintiffs' duties fall under Labor Law § 220. Thus, if the contracting parties' omission of the statutorily required prevailing-wage provision defeated plaintiffs' claims, it would deprive workers of a private means of redress for an established violation of the statute.

Though the result may be in tension with the rules governing ordinary third-party beneficiary actions, *Walton*, 155 F.4th at 159, the Court should hold that third-party-beneficiary actions remain available to workers to vindicate the statutory guarantee even where the contracts did not include the required clause, *see id.* at 160-61 (“A strong argument can be made that by virtue of § 220(3)(a), every public works contract includes the required prevailing wage provision, *whether or not it expressly says so*, and without regard to the contracting parties' intent to allow a third-party beneficiary claim.”). The contracting parties may not have intended workers to be beneficiaries of the contract, which ordinarily would be a key consideration. *See Dormitory Auth. of State of N.Y. v. Samson Const. Co.*, 30 N.Y.3d 704, 710 (2018). But regardless of the parties' intent, the workers have a statutorily guaranteed right to prevailing wages, and they should be able to assert that right via the Court's long-recognized private mechanism for doing so.

This Court has already held that the payment obligation under a contractual prevailing-wage provision turns on “the law as correctly understood” rather than “as the [contracting] parties may have misunderstood it.” *Ramos III*, 24 N.Y.3d at 148. The Court found this conclusion “particularly clear” given that “a contractual clause agreeing to comply is required by the statute itself.” *Id.* The same basic logic supports foregrounding the workers’ statutory rights—rather than contracting parties’ intent—in resolving whether the plaintiffs here have a cause of action despite the parties’ choice not to provide for payment of prevailing wages. And, as discussed in the next section, the text, purpose, and history of § 220 all confirm that this is the right result. Whether workers will ultimately recover prevailing wages ought to turn primarily on the substantive law—which should be sensitive to governments’ contracting costs and litigation burdens, and deferential to the fiscal officer’s judgments. The courthouse doors should not be closed from the outset based solely on whether the contract contains a prevailing-wage provision.

C. The text, purpose, and history of Labor Law § 220 support recognition of such cause of action.

Distinctive features of the text, purpose, and history of Labor Law § 220 support recognition of a contractual cause of action in these

circumstances. Indeed, it would be at odds with the statute to deprive workers of a private remedy.

To start, Labor Law § 220 establishes a pecuniary entitlement to prevailing wages for individuals who provide their labor on covered projects—an entitlement that could hardly be more direct, concrete, and personal. *See Brian Hoxie’s Painting Co. v. Cato-Meridian Cent. School Dist.*, 76 N.Y.2d 207, 212 n.2 (1990) (“[T]he overriding purpose of the prevailing wage requirements is to ensure that workers on public projects receive adequate pay.”). This is evident from the provision’s text, which explicitly acknowledges workers, *see* Labor Law § 220(3)(a); from its legislative history, *see, e.g.*, Bill Jacket, L. 1984, ch. 767; and from this Court’s precedent, *see Gaston v. Taylor*, 274 N.Y. 359, 364 (1937).

On its face, moreover, Labor Law § 220 requires that every contract subject to its mandates include a prevailing-wage provision. *See* Labor Law § 220(3)(a) (providing that every public-works contract “shall contain a provision that each laborer, workman or mechanic ... shall be paid the wages herein provided”). As this Court has held, that statutory requirement is an indication that the Legislature intended there to be a private cause of action. *Wright*, 72 A.D.2d at 960-61 (Cardamone, J.P. & Hancock, Jr., J., dissenting); *Fata*, 289 N.Y. at 406-07.

It would clash with this intention if contracting parties' neglect of the statutory requirement were enough to preclude the private remedy.

Acknowledging a contractual cause of action here also sits easily within the broader legislative scheme. Though Labor Law § 220 also provides for administrative enforcement, this Court has repeatedly confirmed that the Legislature did not intend for that mechanism to bar private contract suits. *Wright*, 72 A.D.2d at 960-61 (Cardamone, J.P. & Hancock, Jr., J., dissenting); *Fata*, 289 N.Y. at 406-07. And the Legislature has never objected to the Court's consistent recognition of contract actions on this basis. The Court's unwavering acknowledgement that this private remedy is important to the statutory scheme, and the Legislature's acceptance of this precedent through over a century of statutory amendments addressing other points, confirm that the Legislature envisioned private enforcement working together with administrative enforcement to protect workers' right to prevailing wages. A hole would be opened in this enforcement scheme if workers could not assert a contractual cause of action any time the contracting parties' omitted the legally required term from their agreement.

The City's Comptroller, too, views the private contractual remedy as an important complement to his Office's administrative enforcement as the statutory "fiscal officer" for the City of New York. *See* Labor Law

§ 220(8). Without a private remedy, there is a risk that some meritorious prevailing-wage claims could go unaddressed. To be sure, administrative enforcement may inform private litigation, such as where a court defers to a fiscal officer's prevailing-wage determination rendered in an administrative proceeding when like issues are litigated in a private action. *See, e.g., Herman v. Judlau Contr., Inc.*, 204 A.D.3d 496, 496 (1st Dep't 2022). Beyond that, the fiscal officer may render an opinion that carries weight in a private action. *See, e.g., Ramos v. SimplexGrinnell LP*, 740 F.3d 852, 856-58 (2d Cir. 2014). But workers should have the option to enforce their rights in private litigation. Their access to that private remedy should not turn on the contracting parties' decision whether to include a prevailing-wage term in their contract.

POINT II

THE CAUSE OF ACTION SHOULD BE SUBJECT TO A THREE-YEAR STATUTE OF LIMITATIONS

The foregoing discussion also points to the answer for the statute of limitations. When the contract omits or disclaims the payment of prevailing wages, the workers' cause of action fundamentally exists to fulfill the statutory guarantee of Labor Law § 220. Though the claim is labeled as sounding in contract, it enforces a right that is conferred by the

statute. Thus, the most apt statute of limitations is the three-year statute of limitations under CPLR § 214(2) for actions “to recover upon a liability ... created or imposed by statute.” *See Gaidon v. Guardian Life Ins. Co. of Am.*, 96 N.Y.2d 201, 208-09 (2001) (holding three-year period appropriate for “claims which, although akin to common-law causes, would not exist but for the statute”). This limitations period would echo the statute of limitations and look-back period selected by the Legislature for administrative enforcement. *See Labor Law § 220-b(3)*. So understood, the limitation period could not be shortened by any provision in the contracting parties’ agreement.

Beyond that, the three-year limitation period would sit comfortably between the unsatisfactory limitation periods sought by the parties. Defendant asserts that the contracts’ one-year statute of limitations must be applied to workers’ claims (*see* Brief for Respondent 34-35). But it makes little sense to hold workers to the contractual limitation period when the parties did not include a prevailing-wage provision in the contract at all—plainly, they were not negotiating the limitation period with prevailing-wage claims in mind.

For their part, plaintiffs argue that no contract clause “shortening the statute of limitations” should be enforceable against workers (Brief for Appellants 19-20). The City agrees in the main. But, to the extent

plaintiffs are suggesting that the six-year default statute of limitations for contract actions should control, *see* CPLR § 213(2), they are mistaken. The six-year statute of limitations for contract actions is a deliberately long default rule that parties are ordinarily able to contract around. *See* CPLR § 201; *John J. Kassner & Co. v. City of N.Y.*, 46 N.Y.2d 544, 551 (1979). It makes little sense to look to this default rule in circumstances where the cause of action is not the product of negotiation because the contracting parties did not believe prevailing wages were due. Moreover, precisely because the parties to such contracts would lack the ability to depart from the six-year period, that period, if adopted, would not operate as a mere default, but rather would be set in stone. Plaintiffs, like defendant, rest their limitation period on a contract that the Second Circuit has already determined failed to include a required provision; that contract should not control the issue.

Ultimately, neither the contracting parties' chosen limitation period nor the CPLR's default rule for contract claims matches the reality of the situation or the character of the cause of action, which advances the statutory guarantee of prevailing wages. Looking instead to the limitation period for statutory liabilities avoids these problems and provides a sounder and more workable answer to the Second Circuit's second certified question—ensuring that workers have fair opportunity to

sue, while also protecting interests of certainty and repose for governmental entities and their contractors.²

² This case does not present the question of whether the contractual limitation period applies when the contract does provide for payment of prevailing wages. The Court may choose to leave that question for another day and reformulate the second certified question accordingly. *See Cordero v. Transamerica Annuity Serv. Corp.*, 39 N.Y.3d 399, 407 (2023). But the statutory limitation period may be an appropriate metric—or, alternatively, a floor—for all private claims to enforce prevailing wages for the reasons discussed above.

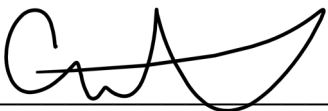
CONCLUSION

The Court should answer the certified questions by recognizing a contractual cause of action with a corresponding three-year statute of limitations.

Dated: New York, New York
March 12, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 3,323 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.

A handwritten signature in black ink, consisting of a series of loops and curves, positioned above a solid horizontal line.

**Court of Appeals
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KEVIN T. MADDISON and DAVID WALTON, individually and
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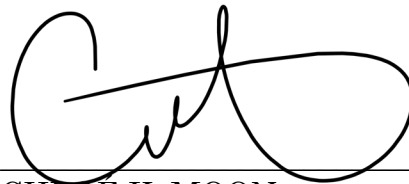
AFFIRMATION OF SERVICE BY UPS

CHLOÉ K. MOON, affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true and that this document may be filed in an action or proceeding in a court of law: on April 16, 2026, I served two copies of the accompanying amicus brief on all parties by transmitting the document to UPS for second-day delivery to the addresses indicated below:

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