No. CTQ-2025-00007

To be argued by:
ALEXANDRIA TWINEM
5 minutes requested

# State of New York
# Court of Appeals

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

*Appellants*,

v.

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

*Respondent*.

## BRIEF FOR AMICUS CURIAE NEW YORK STATE DEPARTMENT OF LABOR


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## INTEREST OF AMICUS CURIAE

The New York State Department of Labor (DOL) submits this brief as amicus curiae in support of appellants Kevin T. Maddison and David Walton. DOL, through its Bureau of Public Work and Prevailing Wage Enforcement (the Bureau), is responsible for protecting the rights of individuals who are employed in connection with a public work project within the State, including the right of workers to be paid the prevailing wage rate for the workers' trade in their geographic location.

DOL has a strong interest in the answers to the questions certified in this case by the Second Circuit Court of Appeals. Both questions concern whether, through their contracts with public entities, private employers may limit the ability of employees to enforce their statutory right to prevailing wages in court, either 1) by omitting statutorily required contract terms promising to pay prevailing wages, or 2) by including contract terms that reduce the applicable statute of limitations to a fraction of the time to which a worker would otherwise be entitled—and to a time period too short for many workers to learn that they have been the victim of a

prevailing wage law violation and to bring an action to vindicate their rights.

DOL agrees with appellants that the answer to the Second Circuit's first certified question should be "yes" and the answer to the second certified question should be "no." An employer may not, through its contract with the public entity overseeing the public work project, either eliminate the right of employees to sue for prevailing wages or truncate the statute of limitations governing such a suit. DOL largely agrees with the legal analysis offered by appellants and files this brief to provide the Court with its perspective on these questions based on its experience as the administrative enforcer of the prevailing wage law in New York.

In particular, this brief explains why the statutory requirement to include in the contract a promise to pay prevailing wages cannot reasonably be read to permit employers to avoid the obligation by omitting the promise. And the brief also explains that allowing employers to shorten the statute of limitations for vindicating the right to prevailing wages would have the practical effect of

eliminating that right for many workers, and the legislature could not have intended to give employers that power.

## QUESTIONS PRESENTED

The following questions were certified to this Court by the United States Court of Appeals for the Second Circuit and accepted by this Court:

1. Is the promise to pay prevailing wages implicit in every public works contract so that individuals employed on public works projects may sue their employers for breach of contract to enforce the prevailing wage requirement under NYLL § 220 even if the employer's written contract does not include the statutorily required promise to pay prevailing wages?

2. Are agreements to shorten the statute of limitations in public works contracts to one year enforceable against workers bringing third-party beneficiary breach of contract claims to enforce the prevailing wage law?

## STATEMENT OF THE CASE

### A. New York's Prevailing Wage Law

For over a century, the State of New York has enshrined in its constitution and laws a requirement that any contract for the performance of public work within the state ensure that all laborers working pursuant to the contract be paid the prevailing rate of wages. *See* N.Y. Const. art. I, § 17; Act of May 10, 1894, Ch. 622, § 2, 1894 N.Y. Laws 1569, 1569; Act to Reenact Section Three of the Labor Law, Ch. 506, § 3, 1906 N.Y. Laws 1394, 1395; *see also Matter of Cayuga-Onondaga Counties Bd. of Coop. Educ. Servs. v. Sweeney*, 89 N.Y.2d 395, 401 (1996) (relaying history of New York's prevailing wage law). As this Court has recognized, the prevailing wage law represents "strong public policy" that overrides other significant interests like a party's right to notice of a wage claim before commencement of an action against it or certain other procedural bars. *Cayuga-Onondaga Counties*, 89 N.Y.2d at 402-03.

New York's current prevailing wage law is codified in New York Labor Law § 220. This provision states that in any contract between a private company and the state, a public benefit

corporation, or a municipal corporation, "[t]he 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." Labor L. § 220(3)(a). And the law requires that all public work contracts contain a provision that each person employed on the project shall be paid the prevailing wage. *Id.*

The prevailing rate of wages is determined by reference to collective bargaining agreements signed in the relevant locality for similar work and must be calculated each year by the "fiscal officer" with authority over that project. *Id.* § 220(5)(a). For public work projects arising in a city with a population of over one million people, the "fiscal officer" is the comptroller of that city. *Id.* § 220(5)(e). For all other public work projects, the "fiscal officer" is the Commissioner of Labor for the State. *Id.*

Section 220 provides an administrative enforcement mechanism through which the Commissioner of Labor, or the comptroller

of any city of over one million individuals,[1] may investigate and prosecute any violations of the prevailing wage law. Under this framework, first enacted in 1927, *see* Act to Amend the Labor Law, Ch. 563, sec. 2, § 7, 1927 N.Y. Laws 1340, 1341, the fiscal officer is empowered to conduct compliance investigations into whether an employer is paying workers consistent with prevailing wages, including by issuing subpoenas and examining witnesses, Labor L. § 220(7). If the Commissioner determines that an employer has failed to pay prevailing wages on a public work, the Commissioner may issue withholdings, issue stop work orders, enter stipulations and settlements, and may issue orders and determinations after a hearing. Labor L. § 220(7).

In addition, the Commissioner may refer employers for criminal prosecution. Failure to pay the prevailing wage as required by Labor Law § 220 can carry criminal penalties ranging from a

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[1] For ease of reference, this brief will refer to the Commissioner of Labor when discussing the fiscal officer with authority to enforce the prevailing wage law. In all cases, this should be understood to also include the comptroller of any city of over one million people. *See* Labor L. § 220(7)(e).

class A misdemeanor to a class C felony depending on the aggregate amount of wages underpaid to employees. *Id.* § 220(3)(d). Multiple infractions can result in an order requiring the private company to disgorge five years' profits. *Id.* § 220(3)(d)(iii).

### B. DOL's Enforcement of the Prevailing Wage Law

Within DOL, the Bureau of Public Work and Prevailing Wage Enforcement (the Bureau) is responsible for investigating all allegations of violations of Articles 8 and 9 of the Labor Law, which includes § 220. *See* Bureau of Public Work, *A Guide for Employers – Article 8* (2023).[2] Each year, the Bureau receives and investigates thousands of complaints of violations of the prevailing wage law. At any given time, the Bureau has approximately 1,200 open investigations. The process of resolving these cases is complex and often lengthy.

When the Bureau opens a case concerning an alleged violation of the prevailing wage law, it begins by conducting an investigation.

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[2] For sources available on the internet, full URLs appear in the table of authorities.

To determine whether employees were properly paid, an assigned Bureau investigator conducts a thorough audit of certified payrolls, reviews the relevant contracts, interviews employees to identify misclassification of workers, and reviews other financial records to determine whether the certified payrolls were falsified. The complexity of the investigation, and the time required to complete it, will depend on a number of factors, including the size and scope of the project, the number of trades working on the project, and the cooperation of the employer. For instance, a small-scale project such as installing new floors in a school gymnasium will require examining a fairly limited set of records due to the job's short duration and likely a single classification of tradespeople with one prevailing wage rate to assess. In contrast, a multi-year bridge repair will involve examining a larger set of records because of the larger number of workers, the longer duration, and the many workers in a variety of trades that each have different prevailing wage schedules each year. Accordingly, the time needed to investigate whether underpayments have occurred can vary widely between cases.

If the evidence establishes that an employer has paid employees less than the applicable prevailing wage rate, the Bureau first encourages the employer to voluntarily come into compliance via a Compliance Agreement Program (CAP). A CAP is negotiated with an employer and is utilized for non-willful violations of the prevailing wage law. *See* Dep't of Labor, *The Bureau of Public Work & Prevailing Wage Enforcement: Compliance and Enforcement* 96-97 (2026). The CAP allows the employer to repay any underpayments voluntarily and thereby avoid the imposition of civil penalties or interest on the underpaid wages. *Id.* A typical case resolved through CAP takes approximately three to six months to complete.

Cases of underpayment may also be resolved through a stipulation between the employer and the Bureau. *Id.* at 96, 98. Under a stipulation, the employer consents to a finding of willful or non-willful underpayment and agrees to repay underpayments, along with interest and penalties agreed to by the employer and the Bureau. *Id.*

If the Bureau and employer cannot agree to resolve the case through one of the above methods, it will be referred for an

administrative hearing before an administrative law judge. If after a hearing it is determined that the employer violated the prevailing wage law, the employer will receive a willful or non-willful violation, will be ordered to repay any underpayments to employees, and will be charged interest up to 16% on the underpayments along with a civil penalty of up to 25% of the underpaid wages. *Id.* at 99. Such cases take significantly longer for the Bureau to resolve, particularly if the employer is uncooperative during the investigation process. And the time needed to resolve such cases may be compounded by the fact that employers who willfully violated the prevailing wage law may have violated the law in the past on other public work contracts. Accordingly, resolving cases that go to a hearing routinely takes three years or more from the time a complaint is filed until a final order of the Commissioner after a hearing.

Moreover, in addition to its investigative and adjudicative work, the Bureau also engages in a number of activities aimed at preventing or reducing violations of the prevailing wage law. Bureau employees educate public entities, employers, workers,

labor organizations, and other involved parties on the prevailing wage law to help employers pay proper wages in the first instance and help employees spot any underpayment issues as early as possible. *See id.* at 92, 109, 114. Bureau staff conduct routine site visits to public work projects to conduct educational outreach and review records to ensure compliance with the prevailing wage law. *Id.* at 92. They also limit who may bid on public work contracts to contractors who comply with the prevailing wage law and other laws relating to employee safety. *Id.* at 43-52. And the Bureau requires all employers engaged in fulfilling a public work contract to submit their payrolls electronically to the Bureau for review. *Id.* at 53-64. In this way the Bureau not only investigates and adjudicates past violations of the law, but also attempts to reduce the number of violations in the future.

## ARGUMENT

## POINT I

### THE PROMISE TO PAY PREVAILING WAGES IS IMPLICIT IN EVERY PUBLIC WORK CONTRACT AND SHOULD BE ENFORCEABLE BY EMPLOYEES AS THIRD-PARTY BENEFICIARIES

On the first certified question, DOL agrees with appellants that it is implicit in every public work contract that the parties agree to pay all employees working under the contract the prevailing wage rate, and, thus, employees may sue their employer as third-party beneficiaries to the contract for violations of the prevailing wage law. This rule comports with both New York's strong public policy in enforcing prevailing wage laws and the Labor Law's express requirement that any public work contract must include a term agreeing to pay employees the prevailing wage. Labor L. § 220(3)(a). The legal justification for this position has been extensively briefed by appellants (Opening Br. 3-18), and DOL agrees with appellants' legal arguments on this point. In addition, DOL offers the following considerations in favor of an affirmative answer to the first question based on its role as administrative enforcer.

Respondent argues (Response Br. 2-5, 10) that absent an express contractual term to pay prevailing wages, there is no evidence that the parties to a public work contract intended to benefit employees by ensuring they were paid a prevailing wage, as required for a suit by employees as third-party beneficiaries. But respondent is mistaken. First, the parties were required by law to have that intent. As this Court has recognized, "[i]f the law is valid it governs the contract and the rights of the parties whether actually incorporated into the writing or not, since all contracts are assumed to be made with a view to existing laws on the subject." *People ex rel. Rodgers v. Coler*, 166 N.Y. 1, 9 (1901).

Second, respondent's argument is particularly inapplicable to public work contracts, where one of the parties is a public entity or a public official, because it is well established under New York law that public officials are presumed to follow the law. *See Matter of Magnotta v. Gerlach*, 301 N.Y. 143, 149 (1950); *Matter of Whitman*, 225 N.Y. 1, 9 (1918). Public officials thus presumptively intend to include—and to require compliance with—the statutorily required

term that obligates the employers to pay prevailing wages in public work contracts.

Third, in DOL's experience, the usual reason why the term is omitted from public work contracts is not that either the public entities or the private employers intend to avoid the requirement to pay prevailing wages, but rather because they are unaware that there is a requirement to include a term about prevailing wages in their contracts.

Bureau staff spend a substantial portion of their time providing education about the law to public entities, along with parties who contract with them, and workers employed by those parties. To this end, Bureau staff provide over 700 educational presentations a year. And in the course of these presentations, the Bureau has found many instances where even people knowledgeable about the statutory requirement to pay prevailing wages are unfamiliar with the requirement to include a term promising to pay such wages in their contracts.

Despite the Bureau's best efforts, it has been unable to ensure that every public entity and contractor receives the necessary

instruction to include a contractual provision about prevailing wages in their public work contracts. The State of New York has over 100 executive departments and agencies that may enter into public work contracts. *See* State of N.Y., *Agency Directory* (last visited April 3, 2026). In addition, there are over 1,500 county, city, town, and village governments across the state that may likewise enter into public work contracts. Office of the Comptroller, *Number of Local Governments* (Feb. 2026). There are nearly 700 school districts, over 900 fire districts, over 8,000 special districts, over 100 housing authorities, and dozens of library systems and community colleges that may likewise enter into public work contracts. *Id.* And this list is far from exhaustive. In short, even if Bureau staff conducted educational outreach *only* to public entities, it would take them more than a decade to reach all of the public entities listed. And, of course, the Bureau cannot devote its educational presentations only to public entities—it must also educate workers, private employers, and other relevant parties.

Moreover, the problem of municipal entities' knowledge about § 220's contract requirement is exacerbated in instances of form

contracts like the ones at issue in this case. Whereas large-scale public work projects are likely to be negotiated, with contracts reviewed by high-level public officials and counsel for the public entity involved, routine maintenance contracts like the fire alarm inspection contracts in this case are not. Rather, these form contracts are generally signed by line-level employees without review by legal counsel. In such cases, even assuming the municipal entity's decisionmakers and legal counsel understand § 220's requirement to include an express contract term about paying prevailing wages, it is unrealistic to expect every employee within that municipality to likewise understand this obligation or have the legal knowledge to discern when a project constitutes a public work for which the contract term would be required. Accordingly, § 220(3)(a) protects public entities and employees by ensuring that all public work contracts contain an implied term that employees shall be paid the prevailing wage under that contract, thereby ensuring that public entities follow the law.

Likewise, data tracked by DOL suggest that *most* employers working on a public work project intend to comply with the

prevailing wage law, whether or not they include such a term in their contracts. First, only about 7% of public work projects in the state result in reports of underpayment and investigation by DOL. Specifically, there were approximately 16,410 public work projects under the Commissioner's authority in 2025, but only 1,200 open investigations into failures to pay prevailing wages during that time. And second, among the employers who fail to pay prevailing wages, some of them will have underpaid unintentionally. In DOL's experience, employers who underpay their workers on public work contracts at least sometimes do so due to good-faith mistakes, including believing the type of work being performed is not covered by Labor Law § 220, or making an error about the rate of the prevailing wage for the trade being performed. As this Court has recognized, such a mistake of fact does not negate the intent of the parties to agree to comply with the law as it actually applies. *Ramos v. SimplexGrinnell L.P.*, 24 N.Y.3d 143, 148 (2014) ("The legislature surely meant that the parties must agree to comply with the law as correctly understood, not as the parties may have misunderstood it.").

Accordingly, all public work contracts in New York should be understood to include an implicit term requiring the payment of prevailing wages because such a term comports not only with this Court's precedent (*see* Opening Br. 3-18), but also with the presumptive intent of the contracting parties to follow the law.

Were this Court to hold otherwise, the effect would be to deprive employees of a valuable judicial forum in which to vindicate their right to prevailing wages based on the happenstance that they were working subject to a contract signed by unknowledgeable parties who failed to include a statutorily required term.

And this problem will be exacerbated by the recent extension of the prevailing wage law to many contracts to which no public entity is a party. In 2020, the state legislature extended the prevailing wage law to contracts between private parties for large-scale projects worth over $5 million if 30% or more of the project is being funded through public funds. *See* Labor L. § 224-a. Under that statute, prevailing wages must be paid to employees working pursuant to such private contracts signed after January 1, 2022, and the covered contracts must contain a term promising to pay

prevailing wages. *See* *The Bureau of Public Work & Prevailing Wage Enforcement: Compliance and Enforcement* 22. And in subsequent years, the legislature further expanded the reach of prevailing wage law to certain renewable energy projects (Labor L. § 224-d), certain broadband projects (*id.* § 224-e), certain climate and energy transition projects (*id.* § 224-f), and certain roadway and excavation projects (*id.* § 224-f).[3]

These new Labor Law provisions mark a dramatic expansion of the application of the prevailing wage rate. They also significantly increase the number of entities the Bureau needs to educate about § 220's requirements, including the requirement of an express contract provision. Given this expansion, it is likely that there will be many more contracts which by law must contain a prevailing wage clause but do not simply because the contracting parties did not know such a term was required. It is implausible that the legislature that extended the prevailing wage law to these private contracts intended to withhold the benefits of that extension from

[3] The Labor Law currently contains two separate sections both designated § 224-f.

employees whenever the required prevailing wage term was omitted from the contract, whether inadvertently or intentionally. By interpreting the law to provide that the promise to pay a prevailing wage is implicit in all covered contracts, this Court can most closely effectuate the legislature's intent to extend the benefits of the prevailing wage law to more workers.

## POINT II

### AGREEMENTS TO SHORTEN THE STATUTE OF LIMITATIONS IN PUBLIC WORK CONTRACTS TO ONE YEAR ARE NOT ENFORCEABLE AGAINST WORKERS BRINGING THIRD-PARTY BENEFICIARY BREACH OF CONTRACT CLAIMS

On the second certified question, DOL likewise agrees with appellants that the public policy underlying the prevailing wage law and analogous caselaw prohibiting employers from contracting to shortened statutes of limitations in the context of the Fair Labor Standards Act counsel against allowing employers to limit their own liability by contracting to shortened statutes of limitations in public work contracts. (Opening Br. 19-29.) DOL offers two additional points in support of that conclusion based on its experience resolving prevailing wage law violations through an administrative

process. First, allowing employers to contract to shortened limitations periods will hinder use of the administrative process offered by the Bureau. Second, even assuming employers are allowed to contract to shortened statutes of limitations, one year is an unreasonable period in the context of prevailing wage law claims based on the length of time it takes the Bureau—which has more investigative tools at its disposal than individual workers do—to investigate and resolve cases.

### A. Allowing Employers to Contract to Shortened Statutes of Limitations for Prevailing Wage Law Claims Will Diminish the Availability of Administrative Relief.

Allowing employers to contract to shortened statutes of limitations for prevailing wage law claims would make it more difficult for workers both to bring timely actions in court and obtain administrative remedies through DOL. Respondents argue (Response Br. 36-37) that it is irrelevant whether employees are prevented from vindicating their rights through third-party beneficiary breach of contract claims because employees can seek redress for underpayment through the administrative procedure outlined

in Labor Law § 220(7). To be sure, the Bureau plays a major role in vindicating workers' rights to prevailing wages and will continue to do so. However, allowing employers to shorten the applicable statute of limitations for suit will exacerbate the burden on the administrative system and risk misleading workers into believing they have no administrative redress for claims.

At present, workers can typically seek relief for underpayment of the prevailing wage rate either through the administrative system by filing a complaint with the Bureau or by filing suit for breach of contract as a third-party beneficiary to a public work contract. To be sure, each year, a significant majority of claims for underpayment of prevailing wages are brought through the Bureau and resolved administratively rather than by litigation. However, the claims that are brought via lawsuit represent a substantial fraction of the total, measured not by number of cases but by the number of projects involved, the number of workers affected, or the complexity of the issues involved. Cases brought in court typically are suits that are amenable to class certification. These may involve underpayment over a significant number of years and often involve

large-scale projects where there are a sufficient number of putative plaintiffs that joining them as parties would be impracticable. Such lengthy large-scale projects are often extremely fact-intensive. And as discussed above (*see supra* pp. 7-10), when the Bureau investigates large-scale projects for compliance with the prevailing wage law, it routinely takes the Bureau three years or more to resolve such cases. It is reasonable to expect that private attorneys investigating potential class claims would require a similar period of time.

If the statute of limitations to bring these lawsuits could be shortened by employers to only one year, the vast majority of these complex cases could not be investigated and timely brought in court and instead would require resolution through the administrative process. At a minimum, this would add significantly to the Bureau's workload and slow the rate at which the Bureau could investigate and resolve all prevailing wage law complaints it receives. The potential backlog would harm workers by delaying their receipt of money to which they are lawfully entitled. At worst, this increased caseload of years-long and especially work-intensive cases could force the Bureau to pursue certain prevailing wage law cases at the

expense of others, according to its resources. *Cf.* Record on Appeal vol. III, at 1243-45, *Chen v. Reardon*, Nos. CV-24-2037, CV-25-0784 (3d Dep't 2025), NYSCEF No. 17 (affirmation of Deputy Commissioner for Worker Protection explaining DOL's decision to exercise discretion to close certain investigations in order to devote resources to other wage and hour claims in suit challenging DOL's exercise of that discretion).

Separately, allowing employers to contract to shortened statutes of limitations for breach of contract claims could mislead some workers into believing they have no recourse to seek repayment of their wages after one year, including in an administrative forum.

DOL has found that workers often learn about the prevailing wage law and their possible underpayment through one of two primary methods: either the worker receives outreach or education directly from Bureau employees, or the worker learns the information second-hand, including through a coworker or a subsequent employer who pays the prevailing wage to the employee, thereby alerting the employee that he or she was previously underpaid.

Workers who learn about the prevailing wage law directly from the Bureau will often make use of the administrative process by filing a complaint with the Bureau, and will therefore not be affected by the statute of limitations for lawsuits. But workers who learn about the prevailing wage law through co-workers or subsequent employers may first consult with an attorney to determine if they have legal recourse for their unpaid wages. If such workers are told that they do not have a legal claim because the public work contract pursuant to which they worked had a one-year statute of limitations that has already expired, they may not realize that there is a separate administrative process with a distinct and longer statute of limitations.

Accordingly, it is likely that some employees will lose the opportunity to vindicate their rights through confusion caused by the shortened statute of limitations respondents seek to impose on public work contracts. And despite the Bureau's extensive outreach, *see supra* pp. 10-11, 14-16, it is not possible for the Bureau to reach every worker or even every public work site or project covered by Labor Law §§ 224-a, 224-d, 224-e, 224-f, and 224-f. There thus

remains a significant risk that workers will be misled by the contractually shortened statute of limitations into believing they have no recourse to receive wages to which they are entitled.

Given this risk, and given the strong public policy in favor of ensuring workers receive prevailing wages as enshrined in Labor Law § 220, this Court's precedents, and the New York State Constitution, this Court should conclude that New York law does not permit employers to shorten the statute of limitations for prevailing wage claims for third-party beneficiary employees.

### B. In Any Event, a One-Year Statute of Limitations Is Not Reasonable for Prevailing Wage Law Claims.

In any event, even if private employers were permitted to contract with public entities for some reduction in the statute of limitations on third-party beneficiary breach of contract claims, they should not be allowed to adopt a one-year statute of limitations because such a limitations period is unreasonable in the context of prevailing wage law claims. That is so for two reasons.

First, a one-year statute of limitations is unreasonable in the context of a third-party beneficiary claim for prevailing wages

because many workers will not learn about either their right to prevailing wages or their shortened statute of limitations to enforce that right within one year of their claim accruing. As discussed above, workers tend to learn that they have not been paid the prevailing wage, and that prevailing wages are required by New York law, either through the Bureau or second-hand from a colleague or subsequent employer. It is unlikely that a particular worker will receive direct education within one year of leaving a job that underpaid them in light of the inability of DOL's educational presentations and job site visits to reach all employees. Nor is it likely that workers will learn about the prevailing wage law from their experience at another job within one year of leaving a job site that did not pay prevailing wages. As a result, allowing employers to contract to a statute of limitations of one year all but ensures that the claims of many individuals will lapse before they ever discover that they had a claim to begin with.

Second, even once workers discover that they are entitled to compensation for underpayment on a public work project, it is still unreasonable to expect them to file suit within one year. As

described above, *see supra* pp. 9-10, prevailing wage law claims routinely take more than three years for the Bureau to investigate and resolve, particularly if they are complex, relate to lengthy public work projects, or involve an uncooperative employer. An individual litigant and their attorney may need at least as long to conduct the investigation, given that they may lack the Bureau's expertise in reviewing prevailing wage law violations, and they lack the Bureau's ability to subpoena payroll records or review those records in the Bureau's payroll database, review the employer's prior public work contracts, and otherwise exercise authority over employers that an individual worker and their attorney do not have.

To be sure, the Bureau is able to complete a portion of its investigations in less than a year. *See supra* p. 9. But here too, the Bureau has tools that are not available to private litigants. The Bureau often resolves claims through the CAP by offering to waive interest and significant civil penalties if the employer repays any underpaid wages. But an individual worker does not have leverage in the form of civil penalties that he or she can offer to waive in

exchange for repayment. As a result, there is no reason to believe that an individual worker would be able to investigate his or her claim in a similarly efficient manner before a one-year statute of limitations expires.

Accordingly, even if there is no absolute bar to a contract term that shortens the statute of limitations in a public work contract, the one-year statute of limitations at issue in this case is unreasonably short under the particular circumstances of prevailing wage law claims.

## CONCLUSION

For the above stated reasons, we respectfully submit that this Court should answer the questions certified by the Second Circuit Court of Appeals as follows:

1. The promise to pay prevailing wages is implicit and incorporated by operation of law in every public work contract so that individuals employed on public work projects may sue their employers for breach of contract as third-party beneficiaries to enforce the prevailing wage requirement under Labor Law § 220

even if the employer's written contract does not expressly include the statutorily required promise to pay prevailing wages.

2. Agreements to shorten the statute of limitations in public work contracts to one year are not enforceable against workers bringing third-party beneficiary breach of contract claims to enforce the prevailing wage law.

Dated: Albany, New York
April 3, 2026

Respectfully submitted,

LETITIA JAMES
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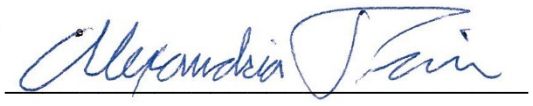
By: 
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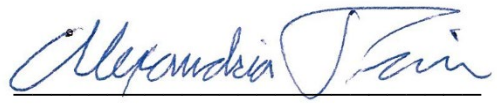
## AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Alexandria Twinem, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 5,332 words, which complies with the limitations stated in § 500.13(c)(1).



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