

To be Argued by:
Jason J. Rozger
(Time Requested: 15 Minutes)

CTQ-2025-00007

COURT OF APPEALS
of the
State of New York

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.

APPELLANTS' BRIEF

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CERTIFIED QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit certified the following questions to this Court in its opinion in this case issued on September 9, 2025. *Walton v. Comfort Systems USA (Syracuse), Inc.*, 155 F.4th 144 (2d Cir. 2025). Appendix (“A”) 5-46. This Court accepted the questions on October 16, 2025.

A4.

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

This case was brought by two former employees of Respondent for, *inter alia*, prevailing wages required by the New York Labor Law (“NYLL”) § 220. Appellants, on behalf of themselves and all others similarly situated, claimed that Respondent’s failure to pay prevailing wages for work performed on public projects in the State of New York constituted breach of contract under a third-party beneficiary theory. A9-A12.

On February 27, 2020, the United States District Court for the Northern District of New York (District Judge Lawrence E. Kahn) granted Respondent's motion for summary judgment on Appellants' prevailing wage claims. A47-A65. In doing so, the district court gave effect to several clauses in Respondent's public work contracts that, in the district court's analysis, prevented Appellants from bringing their prevailing wage claims.

First, the district court gave effect to clauses in those contracts that shortened the statute of limitations for bringing suit to one year, reasoning that Appellants, as third-party beneficiaries to those contracts, could have no greater rights in that respect than the parties to the contract, and rejecting Appellants' argument that the strong public policy underlying the prevailing wage laws, in light of the lack of notice to Appellants of the shortened limitations period, rendered those clauses unenforceable. A56-A57.

Next, the district court held that the public contracts' lack of language providing for the payment of prevailing wages, despite NYLL § 220(3)(a)'s requirement that it be included in those contracts, prevented Appellants from maintaining their third-party beneficiary claims. A57-A59. The court also gave effect to language, in some of the contracts, that affirmatively disclaimed any obligation to pay prevailing wages. A59.

Appellants appealed the February 27, 2020 decision to the Second Circuit Court of Appeals (Circuit Judges Chin, Robinson, and Nathan), resulting in the certified questions presently before the Court. A4-A46.

ARGUMENT

POINT I

BECAUSE NYLL § 220 REQUIRES EACH PUBLIC WORKS CONTRACT TO INCLUDE THE PROMISE TO PAY PREVAILING WAGES, THE ABSENCE OF SUCH LANGUAGE IN THE CONTRACT DOES NOT PREVENT WORKERS FROM SUING TO RECOVER PREVAILING WAGES UNDER SUCH A CONTRACT AS THIRD-PARTY BENEFICIARIES

To allow workers on public projects to vindicate their statutory and constitutional right to receive prevailing wages, New York Labor Law (“NYLL”) § 220(3) requires that public works contracts contain language obligating payment of prevailing wages. The idea that a public works contractor can avoid paying prevailing wages by simply omitting this statutorily-required language is contrary to ordinary precepts of contract law, as well as the public policy expressed in the prevailing wage laws and the accompanying provision in the New York State Constitution. The first certified question should be answered in the affirmative.

A. New York Has a Strong Public Policy Favoring Enforcement of the Prevailing Wage Laws

Courts will refuse to enforce contract provisions that violate public policy.

United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 42 (1987) (recognizing “general doctrine, rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy”); *see also Stamford Bd. Of Educ. v. Stamford Educ. Ass’n*, 697 F.2d 70, 73 (2d Cir. 1982) (“[C]ourts must not be timid in voiding agreements which tend to injure the public good or contravene some established interest of society.”); *Hollis v. Drew Theological Seminary*, 95 N.Y. 166, 172 (1884) (“Contracts which are held to contravene public policy are always essentially vicious or always have evil tendencies. They are not sometimes valid and sometimes invalid, but are always invalid, and the courts will never tolerate or enforce them.”)

Determining the relevant public policy of a jurisdiction, and whether it would justify invalidating contrary contract terms, involves examining the statutory scheme, court decisions, history, and governmental practice. *United Paperworkers Intern. Union*, 484 U.S. at 44; *Muschany v. United States*, 324 U.S. 49, 66 (1945). Applying these factors to New York’s prevailing wage statute demonstrates a strong and lasting public policy interest in protecting workers and guaranteeing a prevailing wage for public works. In 1894, New York became just the second state to codify prevailing wage protections for workers. *Matter of Cayuga-Onondaga Counties Bd. of Co-op. Educational Services v Sweeney*, 654 N.Y.2d 395, 401 (1996) (summarizing state’s history). When a 1901 court decision invalidated part of the

statute, legislators responded by amending the State Constitution to allow for a prevailing wage law. *Id.* Eventually, in 1938, the right of workers on public projects to receive prevailing wages was again enshrined in the State Constitution. N.Y. Const., art. I, § 17. That the prevailing wage right is enshrined in the New York constitution is an especially strong expression of the public policy underlying it. *See Cayuga-Onondaga Ctys. Bd. of Co-op. Educ. Servs. v. Sweeney*, 89 N.Y.2d 395, 401 (1996) (quoting constitutional convention delegate arguing prevailing wage requirement “should assume constitutional proportions so that this policy of state may be manifest to labor and industry as a principle of state”); *People v. Scott*, 79 N.Y.2d 474, 496 (1992) (“[A] State constitutional provision’s presence in the document alone signifies its special meaning to the People of New York.”). This is the context from which the numerous cases cited herein, protecting a worker’s ability to privately enforce the prevailing wage law, arise.

In addition, throughout history and up to the present day, New York’s prevailing wage laws have been expanded and updated in service of the constitutional guarantee and the public policy which underlies it. New York Labor Law §§ 230 *et seq.*, which extends prevailing wage protections to building service workers, was enacted in 1971. In 2007, NYLL § 220 was amended to require employers to notify workers of their right to prevailing wages. *See* NYLL § 220(3-a)(a)(ii). An accompanying memorandum stated legislators were responding to

“testimony regarding the continuing statewide abuse and flagrant violation of the prevailing wage law” and sought to limit the ability of “unscrupulous contractors” to violate the law by taking advantage of workers who did not know of their rights or were not proficient in English. Assembly Mem. in Support of 2007 NY Assembly Bill A9052. In 2021, the State Legislature updated and clarified a category of laborer deemed to be covered by § 220, stating in the accompanying Committee Report, “[T]he New York State Constitution makes clear that it is the public policy of New York to pay the prevailing wage to those working on publicly financed construction projects.” Introducer’s Mem. in Support of 2021 NY Senate Bill S255.

Courts, relying in part on this history, have agreed that the purpose of NYLL § 220 is to protect the worker from unfair treatment and guarantee a prevailing wage, and, in keeping with principles of statutory interpretation, it should be liberally interpreted to further this goal. *Austin v. City of New York*, 258 N.Y. 113, 117 (1932) (noting that the statute is “an attempt by the state to hold its territorial subdivisions to a standard of social justice in their deals with laborers, workmen, and mechanics” and “it is to be interpreted with the degree of liberality essential to the attainment of the end in view”); *Bucci v. Village of Port Chester*, 22 N.Y.2d 195, 201 (1968) (explaining that the statute “has as its entire aim the protection of workingmen against being induced, or obliged, to accept wages below the prevailing rate” and is “designed for the relief of the unprotected workmen.”).

B. New York Law Requires Public Works Contracts to Include Language Requiring Payment of Prevailing Wages to Workers

New York Labor Law § 220(3)(a) provides that public works contracts “shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or any other person about or upon such public work, shall be paid the wages herein provided.” NYLL § 220(3)(a) (emphasis supplied). Thus, the requirement to pay prevailing wages is included in each public works contract as a matter of law, as held by the New York Court of Appeals. *Fata v. S. A. Healy Co.*, 289 N.Y. 401, 405 (1943) (“It cannot be doubted that provisions requiring the contractor to pay such wages are also inserted in the contract, whether voluntarily or under compulsion of the statute, for the benefit of the laborers as well as for the benefit of the public body which is a party to the contract.”); *see also Wright v. Herb Wright Stucco, Inc.*, 50 N.Y.2d 837 (1980) (adopting dissent below, 72 A.D.2d 959, 960 (4th Dept. 1979) (“Section 220 of the Labor Law has as its entire aim the protection of workingmen against being induced, or obliged, to accept wages below the prevailing rate and must be construed with the liberality needed to carry out its beneficent purposes.”) (internal quotations omitted)).

In *Fata*, the court reiterated its prior holding in *Rodgers v. Coler*, 166 N.Y.1 (1901), that NYLL § 220 “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.” *Fata*, 289 N.Y. at 406. *Fata’s*

holding is fully consistent with over a century's worth of this Court's decisions in other contexts concerning statutes that govern contractual relationships. Where a statute requires contracts to contain certain provisions, those provisions are incorporated into those contracts as a matter of law, whether actually included or not. *See, e.g., Doey v. Clarence P. Howland Co., Inc.*, 224 N.Y. 30 (1918) (“[T]he statute [the Worker’s Compensation Law] giving the commission power to make an award is read into and becomes a part of the contract. ... [T]he contract of employment, by virtue of the statute, contains an implied provision that the employer, if the employee is injured, will pay to him a certain sum[.]”) (internal citation omitted); *Hicks v. British Am. Assur. Co.*, 162 N.Y. 284 (1900) (in fire insurance context, “the law reads into the contract the standard policy, whether it be referred to in terms or not”); *People ex rel City of N.Y. v. Nixon*, 229 N.Y. 356, 361 (1920) (Cardozo, J.) (“Statutes then existing are read into the contract. They enter by implication into its terms. They do not change the obligation. They make it what it is.”); *City of Troy Unit of Rensselaer Cnty. Chapter of Civ. Serv. Emp. Ass’n v. City of Troy*, 36 A.D.2d 145, 147 (3d Dept. 1971), *aff’d sub nom. City of Troy Unit of Rensselaer Cnty. Chapter of Civ. Serv. Emps. Ass’n, Inc. v. City of Troy*, 30 N.Y.2d 549 (1972) (“Whether the ordinance is incorporated into the contract by reference or not is immaterial. Contract obligations are determined by the law in force when the contract is made.”).

Therefore, if a law requires a contract to contain certain language, that language is in the contract whether the parties wish to include it or not, and whether the parties to the contract correctly understand their legal obligations or not. This was made abundantly clear by this Court in *Ramos v. SimplexGrinnell L.P.*, 24 N.Y.2d 143 (2014), a third-party beneficiary prevailing wage case like this one:

An agreement to comply with a statute is an agreement to comply with it as correctly interpreted, whether or not the correct interpretation was known to the parties at the time of contracting. This is particularly clear where, as here, a contractual clause agreeing to comply is required by the statute itself (*see* Labor Law § 220[2]). 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.

Id. at 148.

Thus, every public work contract carries with it an obligation to pay prevailing wages that is enforceable through a third-party beneficiary claim, regardless of the subjective intent of the contracting parties. *See also Hernandez v. NJK Contractors, Inc.*, No. 09-cv-4812 (ARR)(VMS), 2013 WL 12363005, at *8 (E.D.N.Y. Feb. 12, 2013) (“There is no dispute here that the terms of the New York public works contracts included the prevailing wage provisions either explicitly or implicitly. Nor can there be, given the requirement under New York law that the contracts include those provisions.”); *Machuca v. Collins Bldg. Servs., Inc.*, 82 Misc. 3d 1211(A), 206 N.Y.S.3d 515 (N.Y. Sup. Ct. 2024) (“[No] language in *Wright*, *Stennett*, or the cases

cited in those decisions indicate[s] that express incorporation language is necessary. ... If an applicable law or regulation required Collins to pay prevailing wages to its employees providing services pursuant to the contract, those employees may sue to enforce that prevailing-wage requirement as third-party beneficiaries.”); *Chicas v. Kelco Constr., Inc.*, No. 121CV09014JGLCSDA, 2023 WL 5016457, at *5 (S.D.N.Y. July 25, 2023), *report and recommendation adopted*, No. 21-CV-9014 (JGLC), 2023 WL 5278515 (S.D.N.Y. Aug. 16, 2023) (“Given the statutory mandate contained in Section 220 of the NYLL, it can be inferred that the public contracts entered into by one or more of the Defendants under which Plaintiffs performed work contained prevailing wage provisions.”).

Conversely, if the required prevailing wage language is omitted from the public works contract, an employee does not lose their right to bring a private action to recover prevailing wages. The right to bring a third-party beneficiary prevailing wage claim does not depend on the NYLL § 220(3) language being actually present. This was stated clearly by this Court in *Cox v. NAP Const. Co.*, 10 N.Y.3d 592, 602 (2008):

We held that “where a valid statute requires the insertion of provisions intended for the protection of laborers or other groups in contracts relating to matters which are subject to regulation by the State,” a “contractual obligation is created which may be enforced by action brought by one of the group for whose benefit the provisions have been inserted.”

Id. (quoting *Fata*, 289 N.Y. at 406). This Court did **not** hold in *Cox* that the insertion of statutory provisions in a contract only created an enforceable obligation if the language was actually inserted; it was the statutory language requiring that insertion that created the obligation. Thus, the prevailing wage obligation is created by the Labor Law, not by the actual contract language itself.

C. Language in a Public Works Contract That Is Contrary to NYLL § 220 Cannot Defeat an Otherwise Valid Prevailing Wage Claim Based on a Third-Party Beneficiary Theory

Since as a matter of law, each public works contract under which Defendant performed public work requires the payment of prevailing wages, and as a matter of law a worker may bring a third-party beneficiary lawsuit to collect owed prevailing wages, any contract language to the contrary violates the prevailing wage law and the overwhelming public policy underlying it. When the district court held that Appellants could not recover as third-party beneficiaries to the Respondent's public work contracts because those contracts did not affirmatively state that prevailing wages were required, it brushed aside the two New York appellate decisions that considered the question squarely and, following *Cox* and *Wright*, held that contract language that attempts to restrict the rights of workers to bring third-party beneficiary prevailing wage claims is unenforceable. In *Wroble v. Shaw Env't & Infrastructure Eng'g of New York, P.C.*, 166 A.D.3d 520, 521 (1st Dept. 2018), the court held that a contract clause forbidding a third-party beneficiary claim for

prevailing wages was unenforceable. In *Singh v. Zoria Hous., LLC*, 163 A.D.3d 1025 (2d Dept. 2018), the court held that parties bringing a third-party beneficiary prevailing wage claim were not subject to a contractual clause requiring exhaustion of administrative remedies. In addition, since the briefing and argument of this case in the Second Circuit, the Appellate Division further reinforced the protections given to prevailing wage plaintiffs with *Santana v. San Mateo Constr. Corp.*, 234 A.D.3d 562, 563 (1st Dept. 2025), which held that under the prevailing wage provisions of New York City Administrative Code § 19-142, which is also enforceable by third-party beneficiaries, “contractual disclaimers of third-party beneficiary rights are void against public policy.” *Id.*

All of these cases stand for the same underlying principle: that New York courts will not enforce provisions in a public works contract that interfere with a worker’s right to enforce their prevailing wage rights through a third-party beneficiary action. And just as an employer cannot insulate itself from its obligation to pay prevailing wages by disclaiming such an obligation in the contract, or requiring the exhaustion of administrative remedies, nor can an employer insulate itself from that obligation by leaving out the prevailing wage language required by § 220(3)(a). To permit such an expedient would allow each employer to rid itself of private prevailing wage enforcement by fiat. Given the strong and longstanding public policy favoring the ability to enforce prevailing wage claims, such an

argument is in clear contravention of New York public policy.

The Second Circuit, in part, justified its certification of this question because of the language in *Maldonado v. Olympia Mech. Piping & Heating Corp.*, 8 A.D.3d 348, 350 (2d Dept. 2004) stating that public workers “possess a cause of action against their employer to recover damages for breach of contract when the contract between the employer and the municipality *expressly* provides for the wages to be paid to such worker.” A38-A39 (emphasis supplied, original emphasis omitted). In fact, there is no valid authority for the proposition that the prevailing wage language in a public works contract must be express, rather than present as a matter of law, to be the basis of a worker’s third-party beneficiary lawsuit to recover prevailing wages. *Maldonado* was decided before this Court’s decision in *Cox*, which held it was the statutory language requiring the insertion of the prevailing wage obligation that created the obligation, rather than the language itself. Thus, to the extent *Maldonado* stands to the contrary, it would be overruled by *Cox*’s clarification of *Fata*.

However, the *Maldonado* decision itself provides no support for the notion that it was meant to be read so expansively. *Maldonado* did not actually hold that prevailing wage language had to be expressly included in the contract to be actionable; rather, it held that the trial court properly dismissed prevailing wage claims where “the plaintiffs did not identify the contracts that [defendant] allegedly

breached.” *Maldonado*, 8 A.D.3d at 350. In this case, the contracts at issue were identified, and to require a prevailing wage plaintiff to identify the public works contracts under which he was improperly paid is fully consistent with a rule that the statutorily required prevailing wage language is actionable whether inserted into the contract or not.

In other words, it is impossible for a contractor to refuse, or not agree, to pay prevailing wages on a public job. New York Labor Law § 220(3)(a) *requires* the contractor to so agree. Defendant would have the Court believe that omitting the prevailing wage language from a public contract relieves it from the obligation of paying such prevailing wages, at least when faced with a third-party beneficiary lawsuit. Were this true, the prevailing wage law would quickly become a nullity. This Court and lower New York courts have therefore universally held that omission of the prevailing wage language in a contract does not extinguish the requirement to pay prevailing wages. *See Fata*, 289 N.Y. at 406; *Twin State CCS Corp. v. Roberts*, 72 N.Y.2d 897 (1988) (“[T]he failure to annex the PRS [prevailing rate schedule] to the work specifications did not relieve petitioner of its obligation to pay prevailing wages”); *see also E. Williamson Roofing & Sheet Metal Co., v. Town of Parish*, 139 A.D.2d 97, 101, 105 (4th Dept. 1988) (“[A]n experienced public work contractor[] likewise knew or should have known of the prevailing wage requirement and is chargeable with such knowledge.... [T]he Legislature has continually increased the

liability of contractors to provide the prevailing wage and supplements as well as the right of employees to enforce their rights against contractors.”) (internal citation omitted). Thus, if the parties to a public works contract include language contrary to the requirements of NYLL § 220, or omit that required language, it does not affect their exposure to a third-party beneficiary lawsuit to recover unpaid prevailing wages. *See Weiner v. Diebold Grp., Inc.*, 173 A.D.2d 166, 167 (1st Dept. 1991) (“While the parties to a contract are free to make any bargain they wish and are held to bargains made by them with their eyes open, they are not free to enter into contracts which violate public policy.”) (internal citations omitted).

D. This Court’s Prevailing Wage Precedents Modify the Common-Law Third-Party Beneficiary Requirements

In certifying the first question, the Second Circuit grappled with this Court’s and other New York appellate court’s prevailing wage precedents, which universally protect the right of workers to bring third-party beneficiary lawsuits to enforce their prevailing wage rights even where those claims are inconsistent with the ordinary, common-law understanding of a third-party beneficiary claim. As the Second Circuit mused, “[T]hat’s not how third-party beneficiary claims ordinarily work.” A37. The Second Circuit was correct – prevailing wage law third-party beneficiary claims are to a degree extraordinary, because of the strong public policy protecting workers’ statutory and constitutional right to recover prevailing wages, and because of the statutory language of NYLL § 220(3) which requires that prevailing wage language

sufficient to support a third-party beneficiary claim be included in each public works contract. This Court's decisions have made that clear for over eighty years.

In *Fata*, this Court rejected the contention that workers could not maintain a third-party beneficiary lawsuit for prevailing wages where the prevailing wage language and rates were only inserted into the contract because of the statute. *Fata*, 289 N.Y. at 405–06 (reversing where “[t]he Appellate Division has, nevertheless, rejected the contention that a laborer, not a party to the contract, may enforce provisions of the contract inserted therein for his benefit, on the ground that ‘it must appear that the parties to the contract intended that such third party would be benefited’”). Under the common-law formulation of a third-party beneficiary claim, a putative third-party beneficiary must show 1) the existence of a valid contract, 2) that the contract was intended for his benefit, and 3) that the benefit was immediate rather than incidental. *See, e.g., State of California Pub. Employees’ Ret. Sys. v. Shearman & Sterling*, 95 N.Y.2d 427, 434 (2000). *Fata* thus abrogated the second factor in the traditional third-party beneficiary analysis – that the parties intended to benefit the third party, in that case the workers seeking to recover their prevailing wages. Thus, this Court in *Fata* made it clear that the common-law third-party beneficiary requirements would be modified where inconsistent with the language and intent of the prevailing wage law.

This Court addressed this principle again in *Wright*, which in addition to

clarifying that private enforcement lawsuits under a third-party beneficiary theory were in no way abrogated by the parallel administrative remedy, also held that the lack of the required prevailing wage rates in the public works contracts was no impediment to such suits. *Wright*, 72 A.D.2d at 960–61 (“[I]n this case the plaintiffs will have to establish at trial the prevailing rate of wage for the locality. This is not an impossible task, however, as the term is appropriately defined in subdivision 5 of section 220. In addition, it is a term with a lengthy judicial history and well susceptible of ascertainment.”) (cleaned up). Because the public works contracts in *Wright* did not contain a term essential to the workers’ recovery – namely, the prevailing wage rates to which they were allegedly entitled – under ordinary third-party beneficiary rules, those workers could not recover. *Wright* held they can, and in doing so emphasized the principle that the contract language required by NYLL § 220(3) is deemed to be in every public works contract, whether expressly included or not. And, under *Wright*, there is no reason for this Court to hold that part of the required contract language – the prevailing wage rates themselves – can be missing from the contract and still support a third-party beneficiary claim, but that omission of all the required statutory language dooms such a claim.

Furthermore, as set forth above, this Court in *Cox* clarified that it is NYLL § 220’s statutory language that creates the prevailing wage obligation, not the contract language itself. *Cox*, 10 N.Y.3d at 602. This aspect of *Cox* was overlooked by the

Second Circuit. A37. Thus, under *Cox*, missing prevailing wage language in a public works contract is of no consequence. Similarly, in *Ramos*, this Court again held that a prevailing wage contract, for third-party beneficiary purposes, was governed by the requirements of the Labor Law, and not the subjective intent of the parties: “The legislature surely meant that the parties must agree to comply with the law as correctly understood.” *Ramos*, 24 N.Y.2d at 148. It would be wholly inconsistent with *Ramos*, as well as the other decisions of this Court as cited above, for the parties to a public works contract to be required to agree to comply with the prevailing wage law in that contract, yet at the same time escape third-party beneficiary liability by omitting the language that the law requires.

Accordingly, the first certified question should be answered in the affirmative.

POINT II

THE PUBLIC POLICY UNDERLYING THE STATUTORY AND CONSTITUTIONAL RIGHT TO PREVAILING WAGES RENDERS CONTRACTURALLY SHORTENED LIMITATIONS PERIODS UNENFORCEABLE AS AGAINST A PREVAILING WAGE PLAINTIFF

This Court accepted the certified question, “Are agreements to shorten the statute of limitations in public works contracts to one year enforceable against workers bringing third-party beneficiary claims to enforce the prevailing wage law?” Because of the strong public policy favoring enforcement of workers’ statutory and constitutional right to bring suit to enforce their prevailing wage rights, the Court should answer this question in the negative.

This Court has held that “the overriding purpose of the prevailing wage requirements is to ensure that workers on public projects receive adequate pay.” *Brian Hoxie’s Painting Co. v. Cato-Meridian Cent. Sch. Dist.*, 76 N.Y.2d 207, 212 (1990). And contractual statutes of limitations are not sacrosanct; “[a]s a matter of public policy, contractual provisions that purport to shorten otherwise applicable limitations periods will be enforced only if reasonable.” *David Tunick, Inc. v. Kornfeld*, 813 F. Supp. 988, 993 (S.D.N.Y. 1993); *see also* CPLR § 201. Clauses in public works contracts shortening the statute of limitations for workers to enforce their prevailing wage rights will deprive workers of their owed prevailing wages. They are thus contrary to the “overriding purpose” of the prevailing wage law and

are unreasonable and unenforceable.

Indeed, the purpose of the prevailing wage law, and the public policy underlying the entire edifice of worker-protective prevailing wage decisions, would be undermined if contracting parties were permitted, without notice to the workers who are the beneficiaries of that law, to enforce a shorter statute of limitations against those workers. To permit contracting parties to secretly eliminate entire swaths of prevailing wage claims in this way is manifestly unfair to the workers, and contrary to the repeated admonitions of the New York appellate courts to interpret the prevailing wage law consistent with its purpose to protect those workers. *See, e.g., Bucci*, 22 N.Y.2d at 201 (“This court has more than once noted that section 220 must be construed with the liberality needed to carry out its beneficent purposes.”) (collecting cases); *see also Bridgestone/Firestone, Inc. v. Hartnett*, 175 A.D.2d 495, 496 (3rd Dept. 1991) (“The Labor Law’s prevailing wage requirement reflects a strong public policy in this State and the statute is to be liberally construed to effectuate its beneficent purpose.”).

To that protective end, New York courts do not hesitate to strike provisions in public works contracts that impede workers from bringing private rights of action to enforce their prevailing wage rights. *See Wroble*, 166 A.D.3d at 521 (“[T]he contract clause prohibiting third-party actions for violation of prevailing wage payments would be void as against public policy.”); *Santana*, 234 A.D.3d at 563 (noting, in

third-party beneficiary case under New York City Administrative Code § 19-142, “contractual disclaimers of third-party beneficiary rights are void against public policy”); *Singh*, 163 A.D.3d at 1025 (holding that parties bringing a third-party beneficiary prevailing wage claim were not subject to a contractual clause requiring exhaustion of administrative remedies).

Given these cases, there can be little doubt that enforcing a contractually shortened limitations period for prevailing wage third-party beneficiary actions similarly violates New York’s public policy.¹ Each pay period where a worker on a public project does not get the required prevailing wage gives rise to a claim for that time period. By shortening the statute of limitations, contractors will be depriving the workers of their substantive right to claim those prevailing wages. In addition, workers do not negotiate prevailing wage contracts, and there is no indication in the record that the workers in this case had any role in negotiating the public works contracts they worked under or that they were ever informed of the terms of those contracts. It would be wholly inconsistent to forbid unscrupulous contractors from directly disclaiming a worker’s right to bring a third-party beneficiary claim to enforce prevailing wages (*Wrobel* and *Santana*, *supra*) while permitting them to

¹ At least one other prevailing wage jurisdiction expressed doubt that a shortened statute of limitations applicable to a prevailing wage claim would be enforceable. *See Thomas v. A.G. Elec., Inc.*, 304 S.W.3d 179, 188 (Mo. App. E. Dist. 2009) (expressing doubt that in a prevailing wage case contract parties are “free to avoid liability by constructing a notice period shorter than the express three-year statute of limitations established by the General Assembly”).

accomplish the same end through a shortened statute of limitations. This Court therefore should not enforce a contractual statute of limitations that would just as surely extinguish their prevailing wage rights.²

A. The Analogous Caselaw Forbidding Shortened Statutes of Limitations for Fair Labor Standards Act Claims Supports a Similar Rule in This Case

The Fair Labor Standards Act, 29 U.S.C. §§ 202 *et seq.* (“FLSA”), shares the same employee-protective purpose as the prevailing wage law. *Compare* 29 U.S.C. § 202 (stating FLSA’s purpose is to correct and eliminate “the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers”) *with Austin v. City of New York*, 258 N.Y. 113 (1932) (reasoning that prevailing wage statute is “an attempt by the state to hold its territorial subdivisions to a standard of social justice in their deals with laborers, workmen, and mechanics”).

Consistent with the FLSA’s employee-beneficent purpose, federal courts will not enforce agreements to shorten the statute of limitations for private lawsuits to enforce claims under that statute, holding that such agreements are contrary to the FLSA and its purposes, and thus unenforceable. In striking such clauses, courts

² Because any shortening of the statute of limitations would serve to extinguish prevailing wage claims, and would violate the public policy of protecting the right to recover prevailing wages, any reduction of the statute of limitations, even if allowing a longer period than the one year at issue in this case, would be equally unenforceable as applied to prevailing wage claims by workers.

reason that because an FLSA cause of action accrues with each unlawful paycheck, an agreement to limit the statute of limitations applicable to such a claim serves to limit the worker's potential recovery, thus thwarting the purpose of the statute. The Sixth Circuit so held in *Boaz v. FedEx Customer Info. Services, Inc.*, 725 F.2d 603 (6th Cir. 2013):

The issue here is whether Boaz's employment agreement operates as a waiver of her rights under the FLSA. Boaz accrued a FLSA claim every time that FedEx issued her an allegedly illegal paycheck. She filed suit more than six months, but less than three years, after her last such paycheck—putting her outside the contractual limitations period, but within the statutory one.

An employment agreement cannot be utilized to deprive employees of their statutory [FLSA] rights. ... That is precisely the effect that Boaz's agreement has here. Thus, as applied to Boaz's claim under the FLSA, the six-month limitations period in her employment agreement is invalid.

Id. at 606 (citation and internal quotation marks omitted). Although the Second Circuit has not opined on this issue, this reasoning and result have been adopted by numerous District Courts in New York. *See, e.g., Pappas v. City of New York*, No. 23-CV-6010 (LJL), 2024 WL 2093472, at *6 (S.D.N.Y. May 9, 2024) (“Under the FLSA, a new cause of action accrues with each payday following an allegedly unlawful pay period. By limiting a grievant to claims that accrued only within the prior ninety days, the effect of the shortened limitation period thus is to limit the grievant's potential recovery under the FLSA and to nullify the purposes of the

statute and thwart the legislative policies it was designed to effectuate.”) (citation omitted) (cleaned up); *Castellanos v. Raymours Furniture Co., Inc.*, 291 F. Supp. 3d 294, 300 (E.D.N.Y. 2018) (“[F]ederal courts have routinely concluded that arbitration provisions shortening the limitations period to bring FLSA claims are unenforceable.”); *Crespo v. Kapnisis*, No. 21-CV-6963 (BMC), 2022 WL 2916033, at *6 (E.D.N.Y. July 25, 2022) (“[F]ederal courts have routinely disallowed arbitration provisions shortening the [FLSA] limitations period.”); *see also Hackler v. R.T. Moore Co.*, No. 217CV262, 2017 WL 6535856, at *4 (M.D. Fla. Dec. 21, 2017) (“[T]he six-month notice provision in the Arbitration Agreement precludes plaintiff from vindicating his rights set forth under the FLSA and is therefore unenforceable. The notice provision interferes with substantive rights under the FLSA by precluding plaintiff from recovering what he would potentially otherwise be able to recover.”); *Glenn v. Monterrey Sec. Consultants, Inc.*, No. 24-CV-8260, 2025 WL 2026302, at *4 (N.D. Ill. July 21, 2025) (declining to enforce 30-day grievance deadline as against FLSA claims).³

The same reasoning applies to private lawsuits under the prevailing wage law.

Each week a worker on a public project does not receive the required prevailing

³ None of these cases hold that a contract shortening an FLSA statute of limitations can be reformed by reducing the time shortened, rather than striking the clause entirely. Forfeiting (for example) one year of prevailing wage claims is just as contrary to public policy as forfeiting the five years in this case.

wage is a week the worker has a claim for their underpaid wages. This means, just as with the FLSA, shortening the limitations period applicable to such claims limits workers' recovery of their prevailing wages, depriving them of the substantive right to be paid those prevailing wages. Enforcing such limitations on a prevailing wage plaintiff violates the purpose of the prevailing wage law just as surely as similar enforcement in an FLSA case.⁴

Thus, since the purposes of the FLSA and the prevailing wage law are similar, this Court should similarly find that shortened statutes of limitation are contrary to the purpose of NYLL § 220. Holding that contractually shortened statutes of limitations are unenforceable against prevailing wage plaintiffs would not be an unusual or groundbreaking result – instead, it would merely harmonize this aspect of private enforcement of the prevailing wage law with private enforcement of the FLSA⁵.

⁴ New York law also makes it clear that forfeiture of earned wages is disfavored. *See, e.g., Arbeeney v. Kennedy Exec. Search, Inc.*, 71 A.D.3d 177, 182 (1st Dept. 2010) (“There is a long-standing policy against the forfeiture of earned wages.”); *Kolchins v. Evolution Markets, Inc.*, 31 N.Y.3d 100, 101 (2018) (“[T]o the extent plaintiff’s production bonus constituted ‘earned wages’ under the Labor Law, it was not subject to forfeiture.”). At least one court has held this principle renders a release invalid as applied to prevailing wage claims, where obtained from unrepresented public workers. *John F. Cadwallader, Inc. v. New York State Dep’t of Lab.*, 112 A.D.2d 577, 579 (3d Dept. 1985).

⁵ Notably, the New York City Human Rights Law, New York City, N.Y., Code § 8-502(d-1), forbids the shortening of the statute of limitations for civil actions under that section.

B. Enforcing Clauses in Public Works Contracts that Shorten the Statute of Limitations as against Workers Bringing Third-Party Beneficiary Claims Would Impermissibly Favor the Administrative Remedy over the Private

This Court has made it clear in *Wright* and *Fata* that the private enforcement provided to a third-party beneficiary lawsuit is in no way disfavored, or subordinate to the administrative remedy. *See, e.g., Wright*, 72 A.D.2d at 960 (“Although at one time there may have been speculation that this statutory remedy superseded and extinguished private employees’ common law contractual causes of action[], such view as the Court of Appeals has stated, ‘cannot be read into the statute by any reasonable construction.’”). This Court’s repeated and consistent decisions protecting the private right of action, as detailed above, are testament to this fact. At the same time, there is no doubt that in an administrative enforcement action, the “fiscal officer” (meaning the New York Department of Labor or the New York City Comptroller) would not be bound by any shortened statute of limitations in the public works contract, as such actions are taken directly under the statute, and not on a third-party beneficiary theory. NYLL §§ 220(7), (8). Thus, if shortened statutes of limitation are permitted, and as public contractors increasingly take advantage of these workarounds, the administrative remedy would have to take an increasing share of the enforcement burden. That administrative remedy would, by necessity, become the *de facto* favored remedy, while this Court has taken pains to prevent

such an outcome *de jure*.⁶ Such a result would be wholly inconsistent with this Court's steadfast protection of the constitutional right of workers to enforce their prevailing wage rights.

C. Cases Approving Shortened Limitations Periods in Non-Prevailing Wage Third-Party Beneficiary Cases Are Inapplicable

The Second Circuit, in discussing the shortened statute of limitations (A41-42), cited cases for the general proposition that shortened statutes of limitations are reasonable (*Hurlbut v. Christiano*, 63 A.D.2d 1116, 1117 (4th Dep't 1978); *Planet Constr. Corp. v. Board of Educ. of City of N.Y.*, 7 N.Y.2d 381(1960)) and that a one-year contractual statute of limitations is reasonable (*Timberline Elec. Supply Corp. v. Insurance Company of North America*, 72 A.D.2d 905, 906 (4th Dept. 1979), *aff'd* 52 N.Y.2d 793 (1980); *Krugman & Fox Construction Corp. v. Elite Associates, Inc.*, 167 A.D.2d 514, 515 (2d Dept. 1990)). Those cases are inapplicable to the question of whether language in a public works contract can shorten the statute of limitations applicable to a third-party prevailing wage claim, for the straightforward reason that none of those cases involved a claim by a worker for prevailing wages owed under NYLL § 220. None of the public policy interests implicated by the constitutional

⁶ In addition, non-union contractors would have an advantage over union contractors, as the unscrupulous would use statutes of limitation to rid themselves of much of their burden to pay prevailing wages. This is also contrary to the public policy underlying the prevailing wage law. *See Vandee v. Suit-Kote Corp.*, 208 A.D.3d 1012, 1015 (4th Dept. 2022) (purpose of NYLL § 220's amendment requiring prevailing fringe benefits "was to eliminate the unfair advantage in bidding on public works contracts that accrued to non-union contractors who did not provide employees with the same level of benefits afforded by union contractors").

and statutory right to recover prevailing wages are present in any of these cases. The cases cited by the Second Circuit involved commercial and presumably sophisticated parties and implicated none of the protections of the prevailing wage rights discussed herein.

Similarly, neither of the cases cited by the Second Circuit for the proposition that a third-party beneficiary is bound by the terms of the underlying contract (*Timberline, supra*, and *BAll Banking Corp. v. UPG, Inc.*, 985 F.2d 685, 697 (2d Cir. 1993)) are prevailing wage cases either, which, as shown in *Point I.D., supra*, makes all the difference. The third-party beneficiary device must be analyzed in light of NYLL § 220 where it applies, and since enforcing a shortened statute of limitations against a prevailing wage plaintiff is contrary to the public policy behind the prevailing wage law, it matters not that in an ordinary third-party beneficiary case such a limitation might be enforceable.

Moreover, Appellants are not asking for more substantive rights under the contract than the direct parties; they are not seeking to expand the scope of work to be done or to adjust the contract price. For Appellants to not be subject to an undisclosed shortened limitations period does not offend the substantive rights of the direct parties to the public works contracts. A limitations period is a procedural right, not a substantive one. *Tanges v. Heidelberg N. Am., Inc.*, 93 N.Y.2d 48, 54–55 (1999) (“In New York, Statutes of Limitation are generally considered procedural

because they are viewed as pertaining to the remedy rather than the right.”). Thus, if Appellants as third-party beneficiaries enjoy a longer statute of limitations than the direct parties to the contract, they are not enjoying more substantive rights than those parties; they are merely being allowed to take full advantage of the remedy made available to workers by the State to enforce their prevailing wage rights.

In sum, to enforce shortened statutes of limitation in public works contracts against prevailing wage litigants would be completely contrary to the public policy underlying the prevailing wage law, and would hollow out private enforcement of that law in a way wholly inconsistent with this Court’s precedents protecting the right to do so. Accordingly, this Court should answer the second certified question in the negative.

CONCLUSION

For the foregoing reasons, this Court should hold: 1. That the promise to pay prevailing wages is indeed implicit and incorporated by operation of law in every public works contract, and that individuals employed on public works contracts may sue for breach of contract to enforce the prevailing wage requirement under NYLL § 220 even if the employer’s written contract does not expressly include the statutorily required promise to pay prevailing wages; and 2. That agreements to shorten the statute of limitations in public works contracts are not enforceable against workers bringing third-party beneficiary breach of contract claims to enforce

the prevailing wage law.

Dated: December 12, 2025
New York, New York

Respectfully submitted,



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CERTIFICATION OF COMPLIANCE WITH RULE 500.13(c)

I, Jason Rozger, certify that the attached Appellants' Brief, containing 7016 words, complies with the Court's word count limit as described in Rule 500.13(c).

Dated: December 12, 2025
New York, New York

Respectfully submitted,

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STATE OF NEW YORK
COURT OF APPEALS

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

No. CTQ-2025-00007

Appellants,

-against-

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

Respondent.

AFFIRMATION OF SERVICE

I, Jason Rozger, hereby affirm pursuant to CPLR § 2106, under penalty of perjury under the laws of New York, that on December 12, 2025, I served three copies of the foregoing Appellants' Brief on Respondent via overnight mail to the following address:

Jessica Pizzutelli, Esq.
Little Mendelson P.C.
375 Woodcliff Drive, Suite 2D
Fairport, NY 14450

I affirm this 12th day of December, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: December 12, 2025
New York, New York



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