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,

- against -

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

Respondent.

REPLY BRIEF FOR APPELLANTS

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CERTIFIED QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit certified the following questions to 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?

The first question should be answered in the affirmative, and the second question in the negative.

INTRODUCTION

It is a constitutional guarantee that every laborer, workman, and mechanic in New York is entitled to prevailing wages for work performed on public projects. N.Y. Const., art. I, § 17. And for over a hundred and thirty years, New York State courts, lawmakers, and elected representatives have made it a point to codify, expand, and protect that right whenever given the opportunity to do so. *See* Appellants' Brief ("App. Br.") at 3-6. Notably, this Court has never hesitated to protect workers' rights to bring a private right of action for prevailing wages on a third-party beneficiary theory, *see Fata v. S. A. Healy Co.*, 289 N.Y. 401, 405 (1943);

Wright v. Herb Wright Stucco, Inc., 50 N.Y.2d 837 (1980), or to remove procedural obstacles to enforcing prevailing wage rights, *see Cayuga-Onondaga Ctys. Bd. of Co-op. Educ. Servs. v. Sweeney,* 89 N.Y.2d 395, 399 (1996); *Bucci v. Vill. of Port Chester*, 22 N.Y.2d 195, 201 (1968). In doing so, this Court recognized that New York Labor Law ("NYLL") § 220 "is an attempt by the State to hold its territorial subdivisions to a standard of social justice in their dealings with laborers, workmen and mechanics. It is to be interpreted with the degree of liberality essential to the attainment of the end in view." *Austin v. City of New York,* 258 N.Y. 113, 117 (1932). That public policy is wholly inconsistent with a public works contractor avoiding liability by omitting the prevailing wage language from the public works contract, in violation of NYLL § 220(3), or enforcing a shortened statute of limitations against a worker seeking to enforce those rights, as Appellants argued in their principal brief.

In its opposition Respondent does not, and cannot, dispute the existence of this public policy protecting the right to prevailing wages. Instead, Respondent pretends that the language NYLL § 220(3) requires in each contract does not exist and that non-prevailing wage third-party beneficiary cases control. Respondent also resurrects the argument, definitively put to rest by this Court in *Fata* and *Wright,* that the existence of the administrative enforcement remedy in § 220(7)-(8) supersedes the third-party beneficiary remedy. Respondent similarly can point to no countervailing public policy favoring enforcement of a shortened statute of

limitations against a prevailing wage plaintiff, and their reliance on freedom of contract is in fact a plea to be permitted to use contracts to avoid their prevailing wage obligation. Respondent also makes the irrelevant argument that the administrative remedy of NYLL § 220(7)-(8) does not provide for an implied private right of action. This Court should therefore answer the first certified question in the affirmative, and the second in the negative.

ARGUMENT

I. STATUTORY LANGUAGE, LONGSTANDING PUBLIC POLICY, AND APPELLATE PRECEDENT MANDATE THE CONCLUSION THAT ALL PUBLIC WORKS CONTRACTS CONTAIN THE PREVAILING WAGE LANGUAGE REQUIRED BY NYLL § 220

A. As Made Clear by This Court and the First and Second Departments, NYLL § 220 and Public Policy Considerations Mandate that Prevailing Wage Obligations Are Included and Operative in Every Public Works Contract and Support a Third-Party Beneficiary Claim Thereon

While non-prevailing wage third-party beneficiary claims ordinarily require "express contractual language" and a showing of "intent," appellate courts—including this one—universally recognize that the "beneficent purposes" of NYLL § 220, as well as the mandatory prevailing wage contract language of § 220(3), obviate those strict requirements in a prevailing wage case. To answer the Second Circuit's question, that is why, in a third-party beneficiary case seeking prevailing wages, the subjective intent of the parties is irrelevant even though that is not how third-party beneficiary claims "ordinarily work." (A37). This Court and two separate

panels of the Appellate Division have expressly so ruled. *Fata,* 289 N.Y. at 405 (recognizing viability of third-party beneficiary claim whether contract language is inserted "voluntarily *or under compulsion of the statute*") (emphasis added); *Santana v. San Mateo Constr. Corp.*, 234 A.D.3d 562, 563 (1st Dept. 2025) (holding "contractual disclaimers of third-party beneficiary rights" under N.Y.C. Admin. Code § 19-142 "void as against public policy") (citing *Wroble v. Shaw Env't & Infrastructure Eng'g of New York, P.C.,* 166 A.D.3d 520 (1st Dept. 2018) (same)); *see also Singh v. Zoria Hous., LLC*, 163 A.D.3d 1025, 1026 (2d Dept. 2018) (in prevailing wage third-party beneficiary case, striking administrative exhaustion requirement despite contract language and contracting parties' intent). The common thread linking these cases is clear—that in a prevailing wage lawsuit based on a third-party beneficiary theory, any inconsistency between the contract language and the requirements of NYLL § 220(3) cannot impair the right of a worker to bring such a case.

These same cases mandate the conclusion that in a prevailing wage case, omitted contract language cannot forestall a third-party beneficiary claim any more than the third-party beneficiary disclaiming language of the contracts in *Wroble* and *Santana,* or the administrative exhaustion language of the contract in *Singh*, could. There is no material difference between a contract that expressly disclaims third-party remedies and a contract that purposely omits the contract language required by

NYLL § 220(3)(a). Neither such contract reflects any subjective intent on the part of the contracting parties to benefit third parties, but in all cases their intent is irrelevant and all public works contracts by law conform with NYLL § 220(3)(a) and allow for third-party beneficiary claims by workers. An implied contract term is still a contract term. *Norfolk & W.R. Co. v. Am. Train Dispatchers' Ass'n*, 499 U.S. 117, 130 (1991) ("Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge.") (citation and internal quotation marks omitted); App. Br. at 8 (collecting cases). Thus, prevailing wage language exists in each public works contract, sufficient to support a third-party beneficiary claim by a worker owed prevailing wages, whether incorporated expressly or implicitly by law.

B. Respondent's Argument that Non-Prevailing Wage Third-Party Beneficiary Decisions Require Express Prevailing Wage Language is Wholly Inconsistent with Overwhelming Prevailing Wage Appellate Authority

Respondent can point to no countervailing public policy that would stand against the strong public policy of protecting prevailing wage rights, and third-party beneficiary claims to enforce those rights. Respondent similarly cannot dispute that *Fata, Wroble, Singh,* and *Santana* stand for the proposition that public works contract language that is inconsistent with NYLL § 220 is invalid. Respondent's

argument therefore depends on (1) *Wroble, Santana,* and *Singh* being "wrongly decided" by three separate panels of judges in the First and Second Departments; (2) misunderstood dicta in *Fata* stating that "[u]pon this appeal we assume, *arguendo*, that if the obligation of the defendant to pay wages 'not less than the prevailing rate' existed only by fiat of the Legislature, the remedy provided by the Legislature for violation of the obligation it has created would be exclusive," *Fata,* 289 N.Y. at 404; and (3) various *dicta* that express language is required, and which is inconsistent with the public policy underpinning the prevailing wage right. None of these arguments have merit.

First, Respondent forthrightly acknowledges that its argument that the omission of the prevailing wage language required by NYLL § 220(3) from the public works contracts in this case dooms Appellants' claims because of ordinary third-party beneficiary principles is impossible to reconcile with *Wroble* and *Singh*. Respondent's Brief ("Resp. Br.") at 12. There is, indeed, no functional difference between a contract expressly containing the prevailing wage obligation, but that contains a disclaimer against any third-party beneficiary claim, and a public works contract that simply dispenses with the prevailing wage obligation.

Such disclaimers have been held enforceable in non-prevailing wage third party beneficiary cases. *See, e.g., Mendel v. Henry Phipps Plaza W., Inc.*, 6 N.Y.3d 783, 786–87 (2006) (contract "explicitly negates any intent to permit its enforcement

by third parties such as plaintiffs."). Yet, the contracting parties in *Wroble* and *Singh* had no more intent to permit a third-party beneficiary claim than the contracting parties did in *Mendel* and like cases; the difference that made those same kinds of clauses unenforceable in *Wroble* and *Singh* was the public policy, embodied in NYLL § 220, of protecting the right to recover prevailing wages in third-party beneficiary suits. That policy made the intent of the contracting parties to avoid the obligation irrelevant. If an intent to avoid third-party beneficiary enforcement of the prevailing wage obligation is expressed by omitting the language required by NYLL § 220(3), rather than including language disclaiming such a claim, that public policy recognizes that the required language is nevertheless a part of the public works contract in the same way. It would make no sense if a contractor could not avoid third-party beneficiary liability through disclaiming language, but could do so by simply omitting the required language. Respondent is therefore correct that *Wroble* and *Singh* foreclose their argument that the first certified question be answered in the negative. And as those Appellate Division cases are fully consistent with the prevailing wage law, the New York constitutional provision, and the public policy undergirding both (App. Br. at 10-12), they are good law and Respondent provides no valid reason for their reversal.

As to *Fata,* contrary to Respondent's misreading of a dictum therein (Resp. Br. at 8), that decision in fact held that the third-party beneficiary remedy was

available whether or not the prevailing wage obligation was written into the public works contract.[1] The statement in the decision that Respondent relies on—to wit, "[u]pon this appeal we assume, *arguendo*, that if the obligation of the defendant to pay wages 'not less than the prevailing rate' existed only by fiat of the Legislature, the remedy provided by the Legislature for violation of the obligation it has created would be exclusive," *Fata,* 289 N.Y. at 404—was not contested by the plaintiff in that case, and was not the basis for the Court's decision. As the Court made clear, a contractor's prevailing wage obligation was not limited to the statutory prevailing wage obligation created directly by the first sentence of NYLL § 220(3)(a), but also the contractual obligation to pay prevailing wages created by later language in that same section: "[s]uch contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided." *Id.* The *Fata* Court then held that the contractual prevailing wage mandate existed side by side with the statutory prevailing wage mandate, and was in fact created by the language NYLL § 220(3)(a) required in each contract:

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[1] Notably, even accepting the *Fata* Court's assumption as true does not defeat Appellants' arguments. Appellants' position is that every public works contract necessarily contains the language required by § 220(3)(a), whether that language is express or implied. The source of a contract provision—whether by intent of the parties or "compulsion" of statute—has no impact on its enforceability as a contract. Thus, in every case, the prevailing wage obligation arises from both statute *and* contract.

> The statutory mandate that a contractor must pay laborers upon public works wages at least at the prevailing rate was intended for the direct benefit of laborers as well as for the indirect benefit of the State, municipal corporation or public agency which is the other party to the contract. For that reason the statute gives to laborers a statutory remedy for violation of that command. 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.

Fata, 289 N.Y. at 405 (emphasis supplied). The Court went on to reject the decision of the Appellate Division below, which held that "voluntary intention" was required. *Id.* Thus, to argue, as Respondent does, that *Fata*'s holding would be meaningless if NYLL § 220(3)'s mandated language were incorporated into each public works contract, as the law requires, is to ignore *Fata*'s emphasis that the prevailing wage obligation should be fully enforceable through either the statutory or the common-law remedy.[2]

Finally, none of the other cases cited by Respondent on this question squarely hold that the lack of the required prevailing wage language should be treated any differently from a third-party beneficiary disclaimer. Respondent here (*see* Resp. Br. at 11-12) relies on *Maldonado v. Olympia Mech. Piping & Heating Corp.*, 8 A.D.3d 348 (2004); *Winsch v. Esposito Bldg. Specialty, Inc.*, 48 A.D.3d 558, 559 (2008); and

[2] This point was made by this Court later in *Wright*.

Seidel v. Hoffman Floor Covering Corp., No. 09-CV-4027 JS WDW, 2012 WL 3064153, at *2 (E.D.N.Y. July 26, 2012). First, Respondent wrongly characterizes dicta in *Maldonado* as a "holding." (Resp. Br. at 11). As Appellants discussed in their brief, p. 12-14, *Maldonado* 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. That case did not actually hold that express language was required. Next, in *Winsch*, it is unclear whether the plaintiffs alleged the existence of a contract *at all*, much less whether they made any reference to the language required by NYLL § 220. *See Winsch*, 48 A.D.3d at 559 (noting "[t]he complaint failed to identify the provisions of the contracts which allegedly were breached, *or otherwise provide 'the court and [the] parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved*'") (internal citations omitted, emphasis added); A39 ("It is not clear whether the problem in *Maldonado* was the absence of express contractual language supporting the prevailing wage claim or the absence of an identified contract at all."); *cf. Ramos v. SimplexGrinnell LP*, 796 F. Supp. 2d 346, 366 (E.D.N.Y. 2011), *vacated in part on other grounds*, 773 F.3d 394 (2d Cir. 2014) (distinguishing *Winsch* and holding that a plaintiff need only allege the existence of contract provisions required by NYLL § 220).

Finally, *Seidel*, an unpublished federal district court case predating *Wroble*, *Singh*, and *Santana*, and which has never been cited in any New York decision, is completely unpersuasive. First of all, just as in *Maldonado* and *Winsch,* the plaintiffs in *Seidel* apparently did not even identify an applicable public works contract. *Seidel* 2012 WL 3064153, at *1 ("[A]lthough the parties took discovery in this case, Plaintiff has not identified any 'public works' contracts to which [defendant] was a party."). While the court in *Seidel* later states that express inclusion of the NYLL § 220(3) language is required, it still appears from the decision that the very existence of a contract was in question. And in any event, even if not *dicta, Seidel*'s statement that express inclusion was necessary is wholly inconsistent with New York public policy and the decisions of the New York appellate courts on the subject.

In this case, by contrast, there is no dispute that public works contracts exist. (A18-A23). This case therefore "fits under the logic of *Ramos*, rather than *Seidel*." *Hernandez v. NJK Contractors, Inc.*, No. 09CV4812ARRVMS, 2013 WL 12363005, at *8 (E.D.N.Y. Feb. 12, 2013) (distinguishing *Seidel* and holding, as in *Ramos*, that "the court may presume that the public works contracts include [a provision promising to pay prevailing wages] either explicitly or implicitly within their terms") (citing *Ramos*, 796 F. Supp. 2d at 362). Additionally, the court in *Seidel* did not consider the public policy arguments made here, nor did it have the benefit of

considering the appellate decisions in *Wroble*, *Singh*, or *Santana*—all of which came years later.

And, finally, *Seidel*'s rationale for rejecting the holding in *Mercado v. DeDe Construction Corp.*, No. 601811/2002 (N.Y. Cty. Sup. Ct. Aug. 23, 2003), was simply incorrect. As summarized by the Southern District, the Supreme Court in *Mercado* held that "'[i]t would go against the whole purpose of the statute to hold that the subcontractors' employees, who did the actual work on the project, can be denied protection merely because the contractor and subcontractor' did not incorporate the prime contract's prevailing wage language in the subcontract." *Seidel*, 2012 WL 3064153, at *4 (quoting *Mercado*). The Southern District rejected this holding as relying on "faulty logic," reasoning that "a rule limiting contract claims to cases where there was an actual agreement to pay prevailing wages does not deny laborers all of the protections afforded them by Section 220" because "[t]hose laborers may avail themselves of Section 220's statutory enforcement mechanism." *Id.* But the court in *Mercado* was not claiming that laborers would be denied of "all of the protections afforded them by Section 220." The court in *Mercado* noted, correctly, that the laborers would be "denied protection," as in that provided by the third-party beneficiary remedy. *Id.* Given the strong public policy, as set forth above, favoring such enforcement of the prevailing wage law, *Mercado* was decided entirely correctly. Thus, even if not *dicta, Seidel*'s statement that express

inclusion was necessary is wholly inconsistent with New York public policy and the decisions of the New York appellate courts on the subject.

Accordingly, none of the caselaw cited by Respondent should persuade this Court that express inclusion of NYLL § 220(3)'s language is required for a third-party beneficiary prevailing wage law claim.

C. Respondent's Insistence on Administrative-Only Enforcement Misrepresents the Legislative History and Fails to Grapple with the Existence of NYLL § 220(3)(a)

Despite Respondent's argument, administrative remedies were never intended to "supersede[]" or "extinguish[]" third party beneficiary prevailing wage claims. *Wright Herb Wright Stucco, Inc.*, 72 A.D.2d 959, 960 (4th Dept. 1979) (Cardamone, J. P., and Hancock, J., dissenting) ("[I]t is incongruous to hold ... that this ameliorative statute actually had the effect of removing a remedy which workers had heretofore possessed."); *Cox v. NAP Const. Co.*, 10 N.Y.3d 592, 607 (2008) ("Defendants rely on the mere existence of regulations for agency enforcement of prevailing wage legislation.... A similar argument might have been made in *Strong* and *Fata* ... but in both cases we upheld the existence of a common-law remedy. We uphold it again here."). Prior to 1927, third-party beneficiary claims were the *only* mechanism for enforcing prevailing wage rights, *Wright*, 72 A.D.2d at 960, made possible by the Legislature's decisions in 1894 and 1906 to insert prevailing wage guarantees in every public works contract by force of statute. A24-A25; *see* NYLL

§ 220(3)(a). These are clear expressions of a legislative intent to provide for third-party beneficiary claims on all public works contracts alongside the administrative remedy. This is wholly consistent with the legislative scheme of NYLL § 220 and does not, as Respondent claims, threaten to "collapse" anything at all. *See Konkur v. Utica Acad. of Sci. Charter Sch.*, 38 N.Y.3d 38 (2022) ("Here, the statutory scheme expressly provides two robust enforcement mechanisms, indicating that the legislature considered how best to effectuate its intent and provided the avenues for relief it deemed warranted.").

Respondent, for its part, fails to grapple with the existence of NYLL § 220(3)(a) at all. Section 220(3)(a) refers to *contracts* and what those contracts "shall" contain, codifying a preexisting tradition of enforcing prevailing wage rights through common law third-party beneficiary claims (and guaranteeing that tradition into the future). *See Wright*, 72 A.D.2d at 960. Put differently, legislative intent matters to Respondent's arguments *only* when it supports administrative enforcement. When it comes to the legislative intent behind § 220(3)(a), Respondent is completely silent. Respondent also fails to account for the fact that the holding it asks for would render § 220(3)(a) meaningless, by providing for a right without a remedy and incentivizing employers to break the law. This is totally incongruous with the public policy underlying § 220. Taken to their extreme, the logical conclusion of Respondent's arguments is that a third-party beneficiary claim for

prevailing wages should not exist at all. But it does exist, and it has existed for over a hundred years.

D. Cases Finding No Implied Private Right of Action in NYLL § 220 Are Irrelevant to This Analysis

Respondent returns time and again to the refrain that NYLL § 220 does not provide for a "private right of action" (Resp. Br. at 2, 5-7, 15-16) and that giving effect to NYLL § 220(3)'s mandatory inclusion language would open a "backdoor NYLL § 220 claim" (Resp. Br. at 10, 14, 17, 19, 21). This is nonsensical; there is nothing "backdoor" about a remedy that has existed for over 130 years, and is *already provided for in NYLL § 220* by virtue of the Legislature's pronouncement that all public works contracts "shall" contain the promise to pay prevailing wages. *See* NYLL § 220(3)(a); *Wright*, 72 A.D.2d at 960. The question is not whether NYLL § 220 contains an implied private right of action; the question is whether a third-party beneficiary claim seeking prevailing wages is still viable when a public works contract fails to include statutorily required language promising to pay prevailing wages. For all of the foregoing reasons, including the age-old legal principle that contracts are presumed to comply with the law as it exists and not as the parties understand it, the answer to that question should be answered in the affirmative.

II. CONTRACTUALLY SHORTENED STATUTES OF LIMITATIONS ARE UNENFORCEABLE IN PREVAILING WAGE CASES

A. In Prevailing Wage Cases, Third-Party Beneficiaries Should Not Be Bound by Shortened Statutes of Limitations in the Public Works Contract

Respondent cites a number of authorities, wholly outside the prevailing wage context, where courts have held that third-party beneficiaries are necessarily bound by the terms of the underlying contracts, including statutes of limitations shortened pursuant to CPLR 201. This argument is a nonstarter in the same way that Respondent's arguments about "intent" and "express contractual language" are a nonstarter. Public policy considerations permit and, in fact, *require* courts to analyze third-party beneficiary claims differently in the prevailing wage context, and not give effect to any contractual terms that interfere with that right. Respondent's arguments, as it acknowledges on p. 39 of its brief, are directly at odds with *Fata*, *Wroble*, *Singh*, and *Santana*. *See* App. Br. at 20-22.

Respondent's efforts to divorce this case from the prevailing wage context are equally unpersuasive. *See* Resp. Br. at 29-30 ("[T]his is *not a prevailing wage case* under NYLL § 220. This is a *third-party beneficiary breach of contract case* (emphasis in original). As discussed above, third-party beneficiary enforcement is an integral part of the prevailing wage statute's history and legislative scheme. Respondent cannot artificially separate two parts of the same whole in order to cast aside the public policy considerations at play here.

B. Respondent Cannot Cite a Single Persuasive Authority in Support of a Shortened Statute of Limitations for NYLL Wage Payment Cases

Respondent's claim that "numerous courts have upheld contractual limitations periods shortening a party's time to bring a wage claim under the NYLL" should also be rejected. Resp. Br. at 30. None of the cases Respondent cites address the application of a shortened statute of limitations to a prevailing wage case, or indeed to any claim with as strong and constitutionally protected a public policy behind it as in this case. At most, those cases support the enforcement of abbreviated statutes of limitations in discrimination and retaliation cases (a view quickly falling out of favor in New York).[3] But they engage in no "searching analysis" of the public policy considerations unique to employment claims generally or wage payment claims specifically. *See Rodriguez v. Raymours Furniture Co.*, 225 N.J. 343, 354 (2016) (reversing lower court decision that "only" cited "cases that generally dealt with private agreements to shorten statutes of limitations pertaining to common law actions and cases that did not engage in any searching analysis of whether public policy was contravened by the shortening of a limitations period for a public-interest statute," and concluding the New Jersey Law Against Discrimination "deserves a

[3] As referenced in Appellants' opening brief (App. Br. at 25), contractually shortened statutes of limitations are now illegal in NYCHRL cases. Indeed, at least one commentator has argued that shortened limitations periods are illegal in *all* employment cases. *See* Meredith R. Miller, *Time's up: Against Shortening Statutes of Limitation by Employment Contract*, 68 Vill. L. Rev. 221 (2023).

closer assessment"). Indeed, only three of Respondent's cases involve claims under the NYLL,[4] and all three of those cases rely on precedent in the discrimination or retaliation context—not the wage payment context.

In *Keller*, for example—a pay equity case under the NYLL—the Southern District upheld a contractually shortened limitations period, but it did so by relying exclusively on cases that did not involve wage claims at all. *Keller*, 2021 WL 1783522, at *3. *Hegazy* relied on *Keller* and the cases cited in *Keller*. *Hegazy*, 2023 WL 8924092, at *8. *Combs*, which reviewed an arbitration award under the "great deference" standard codified by the Federal Arbitration Act, relied primarily on *Keller* as well. *Combs*, 2023 WL 6162196, at *3, *8.

None of the state cases cited by Respondent are dispositive on this either. In *Ortegas v. G4S Secure Sols. (USA) Inc.*, 156 A.D.3d 580, 580 (1st Dept. 2017), the First Department was adjudicating a discrimination claim. It relied on two cases to conclude that "a six-month period to bring an employment claim is inherently reasonable"—one discrimination and retaliation case, and one case involving common law contract claims between business entities. *Id.* (citing *Hunt v. Raymour*

[4] *See Hegazy v. Halal Guys, Inc.*, No. 22-CV-01880 (JHR) (KHP), 2023 WL 8924092 (S.D.N.Y. Dec. 27, 2023), *modified sub nom. Hegazy v. Halal Guys*, No. 22 CIV. 1880 (JHR), 2025 WL 1001184 (S.D.N.Y. Apr. 1, 2025); *Keller v. About, Inc.*, No. 21-CV-228 (JMF), 2021 WL 1783522 (S.D.N.Y. May 5, 2021); *Combs v. Same Day Delivery Inc.*, No. 1:22-CV-00520-MKV, 2023 WL 6162196 (S.D.N.Y. Sept. 20, 2023).

& Flanigan, 105 A.D.3d 1005 (2d Dept. 2013) (discrimination and retaliation claims under NYSHRL and NYCHRL), and *Smile Train, Inc. v. Ferris Consulting Corp.*, 117 A.D.3d 629, 986 N.Y.S.2d 473 (1st Dept. 2014) (breach of contract, breach of the implied covenant of good faith and fair dealing, and conversion)). Respondent also cites *Hunt*, along with *Curtis v. Marino*, 201 A.D.3d 584, 585 (2022), another discrimination case. Resp. Br. at 31. None of these cases involve or consider wage payment claims under the NYLL.

There are good reasons for courts to more closely scrutinize contracts containing shortened statutes of limitations in the wage payment context. As the Southern District of Ohio put it in *Stang v. Paycor, Inc.*, 582 F. Supp. 3d 563, 567 (S.D. Ohio 2022):

> An employer that pays an employee less than minimum wage arguably gains a competitive advantage by doing so, whereas an employer who discriminates in employment against persons because of their "race, color, religion, sex, military status, national origin, disability, age, or ancestry" does not gain a competitive advantage by doing so.

Id. (citing, *inter alia*, *Boaz v. FedEx Customer Info. Services, Inc.*, 725 F.3d 603 (6th Cir. 2013), and rejecting argument that a shortened limitations period should be permissible in wage cases just because it may be permissible in discrimination cases). In other words, permitting an employer to build a minimum-wage escape hatch into every contract would incentivize a race to the bottom, just as would be the

case here, as public contractors could minimize their exposure to private lawsuits by inserting such clauses in their public works contracts.

The distinction Respondent tries to make between "limiting" a right and "eliminating" a right is completely academic in the context of a public interest statute like NYLL § 220. "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.'" *Wright*, 72 A.D.2d at 960 (internal citation omitted, emphasis added). The private enforcement of § 220 claims and the public interest *served* by that enforcement are "a marriage of interests that cannot be divorced." *See Rodriguez*, 225 N.J. at 361 ("[A] contractual limitation on an individual's right to pursue and eradicate discrimination of any form prohibited under the LAD is not simply shortening a limitations period for a private matter. If allowed to shorten the time for filing plaintiff's LAD action, this contractual provision would curtail a claim designed to also further a public interest. As to the LAD, there is a marriage of interests that cannot be divorced."); *Pfeifer v. Fed. Exp. Corp.*, 297 Kan. 547, 558 (Sup. Ct. 2013) ("[W]hile Pfeifer's contract shortened her time in which to seek recovery rather than outright prohibiting it, ... FedEx effectively weakened her right to pursue a cause of action and potentially subverts the public interest in deterring employer misconduct. In that respect, it impermissibly infringes on Pfeifer's ability to enforce her statutory rights by derogating her access to the courts.").

Respondent's opposition to the FLSA analogy in Appellants' opening brief misses a crucial point. *See* Resp. Br. at 42-44 ("Appellants' FLSA arguments fail to recognize that the FLSA is a uniquely remedial statute that is unlike the NYLL in material respects."). The "NYLL largely parallels the FLSA." *Meyers v. Crouse Health Sys., Inc.*, 274 F.R.D. 404, 421 (N.D.N.Y. 2011). In those places where it does not parallel the FLSA, it *exceeds* the FLSA. *See, e.g., Pinheiro v. Interior Mogul LLC*, No. 22-CV-9856 (JHR) (RWL), 2024 WL 4716346, at *5 (S.D.N.Y. Aug. 28, 2024), *report and recommendation adopted*, 2025 WL 3054389 (S.D.N.Y. Oct. 31, 2025) (noting that "NYLL permit[ted] greater or equal recovery than the FLSA at all relevant times during Pinheiro's employment," and that while "there are no damages at issue that Pinheiro could recover only under the FLSA and not the NYLL, … there are claims under the NYLL for which there is no FLSA parallel"). Thus, the suggestion that FLSA precedents should not be persuasive to a court analyzing NYLL § 220 is inconsistent with this relationship, and the public policy behind the FLSA's forbidding of shortened statutes of limitations is fully congruent with that behind NYLL § 220. *See Stang*, 582 F. Supp. 3d at 567 (holding that employee could not waive right to two-year statute of limitations under wage and hour law in light of "the [law's] remedial nature and incorporation of FLSA standards; (2) Ohio's deference to federal regulations and case law for the determination of eligibility for overtime compensation; and (3) the fact that courts

approach issues regarding claims for overtime raised under the FLSA, the OMFWSA, and Ohio Prompt Pay Act in a unitary fashion.").

Respondent's reliance on *Wright v. 44 Brae Burn Country Club, Inc.*, No. 08-CV-3172, 2009 WL 725012, *4 (S.D.N.Y. Mar. 20, 2009), is also misplaced. *See* Resp. Br. at 43-44 (citing *Wright* for the overbroad proposition that waiver of "NYLL wage claims... does not raise any public policy concerns or run counter to legislative purpose"). The court in *Wright* permitted the waiver of a plaintiff's NYLL Article 6 claims pursuant to a settlement agreement, reasoning:

> The purpose of Article 6 of the NYLL, covering § 190 *et seq.*, is "to strengthen and clarify the rights of employees to the payment of wages." Holding Wright's NYLL claims waived does not implicate these concerns. At the time Wright signed the General Release, he was no longer working for the Club and had not worked there for approximately eight months. *This is not the case of an individual contracting away his basic labor and employment rights to his own detriment and the detriment of others.* Rather, Wright's waiver of his claims was given in exchange for settlement of a dispute between himself and the Club regarding his employment. He was represented by counsel in the settlement negotiations, and the language of the General Release was clear.

Wright, 2009 WL 725012, at *4 (emphasis added). The implications of this case are quite different. Namely: the certified question in this case *does* involve the waiver of "basic labor and employment rights"—to the detriment of workers, in contravention of long-standing public policy, and without even giving those workers notice that their rights have been waived. *See* App. Br. at 20.

C. Freedom of Contract Does Not Eclipse the Entitlement to Prevailing Wages

Respondent's "freedom of contract" arguments also miss the mark. The right to freedom of contract is not absolute. Thus, as this Court noted in *159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353, 360 (2019), a contract term will be deemed unenforceable if "the public policy in favor of freedom of contract is overridden by another weighty and countervailing public policy." Here, of course, that countervailing policy is the constitutional guarantee to prevailing wages—a policy the Legislature has *already determined* should override the right to freedom of contract. NYLL § 220(3) explicitly encroaches on freedom of contract principles by requiring the insertion of prevailing wage language in public works contracts. *See* NYLL § 220(3)(a). The appellate courts, taking their cue from the Legislature and the long line of cases that champion prevailing wage enforcement, have done the same, as exemplified by cases like *Fata*, *Wroble*, *Singh*, and *Santana*. And, of course, the State of New York has the right, as expressed in that section, and in the New York State constitution, to set the terms of the public works contracts for political entities in this state. Respondent is in fact not arguing for the freedom of contract, but for the license to exempt itself from contractual terms required by law.

CONCLUSION

For the foregoing reasons, the first certified question should be answered in the affirmative, and the second in the negative.

Dated: February 10, 2026
New York, New York

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CERTIFICATION OF COMPLIANCE WITH RULE 500.13(c)

I, Jason Rozger, certify that the attached Reply Brief, containing 5,757 words, complies with the Court's word count limit as described in Rule 500.13(c).

Dated: February 10, 2026
New York, New York

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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, Appellants, -against- COMFORT SYSTEMS (SYRACUSE), INC., d/b/a ABJ FIRE PROTECTION CO., INC., Respondent.	No. CTQ-2025-00007

AFFIRMATION OF SERVICE

I, Jason Rozger, hereby affirm pursuant to CPLR § 2106, under penalty of perjury under the laws of New York, that on February 10, 2026, I served three copies of the foregoing Appellants' Reply Brief on Respondent via overnight mail to the following address:

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

On February 10, 2026 I also served a copy of Appellants' Reply Brief on Ms. Pizzutelli by email to JPizzutelli@littler.com.

I affirm this 10th day of February, 2026, 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: February 10, 2026
New York, New York

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