



Information about the Living Wage Ordinance for City Departments and Boards

July 2012

What is Buffalo's Living Wage Ordinance?

Buffalo's Living Wage Ordinance was passed unanimously in 1999 and amended in 2002 and 2007. It provides that certain workers must be paid a living wage. For 2012, the rate is \$10.71 if the worker receives health benefits from the employer and \$12.02 if the employee does not. For 2013, the rate is \$11.05 if the worker receives health benefits from the employer and \$12.40 if the employee does not (there is an automatic cost-of-living adjustment each January 1). The central goal is to make sure that employees of the City and of employers who contract with the City earn enough to keep their families out of poverty.

When does the Ordinance apply?

The Ordinance applies to all City of Buffalo employees. It also applies whenever the City makes a contract for services in which the City pays or receives more than \$50,000 per year with an employer who employs more than ten people. Note that this may include leases and other types of agreement in which the City receives rather than pays funds. If the Ordinance applies to a contract, then it applies to all subcontractors hired under that contract as well – even if the subcontractor employs less than ten people.

There are two exceptions: the Ordinance does not apply to professional services such as legal, architectural, and engineering services, and it does not apply to construction workers who are covered by prevailing wage laws. (Note: it is only construction workers who are exempted. Building service workers are covered by the Ordinance, even if they are also covered by prevailing wage laws).

What are the City departments' duties?

Every set of bid specifications or RFP for services should include the Application for Contract form developed by the City's Living Wage Commission (LWC). The department making the contract should collect all the Applications, and forward the Application of the winning bidder to the LWC.

This includes Applications in which the employer states that they meet one of the exceptions to the Ordinance because they are providing professional services or because they and all their subcontractors are employing only construction workers covered by prevailing wage laws.

The department should include standard Living Wage language in the contract, including the employer's promise to abide by the Ordinance when applicable. The Ordinance also requires the contract to include a provision that violating the Ordinance "shall enable any aggrieved employee to file an action against the contractor for damage" and a provision that "the City has the discretion to terminate the service contract and pursue any other legal remedies" if the contractor fails to comply with the Ordinance.

What are the employer's duties?

All employers bidding on service contracts must submit the Application for Contract. If the employer wins the bid and does not meet one of the exceptions, then the employer and all its subcontractors must do four things:

- Pay all employees a living wage;
- File Quarterly Reports with the LWC;
- Post two copies of the Ordinance or the Employee Rights poster designed by the LWC at the workplace;
- Inform employees making less than \$12 per hour of their possible right to the Federal Earned Income Credit and make available forms required to secure advance Earned Income Credit payments from Contractor.

What if the employer fails to file an Application for Contract?

The Ordinance states that an "employer's failure to file an Application for Contract may bar the City or any of its individual departments from considering a bid for contract. Any contract entered into by the City without receipt of an Application may be voided if not filed with the department within 60 days."

Can an employer seek an exemption from the Ordinance?

The Ordinance allows for a possible exemption in three situations:

- If applying the Ordinance would violate state or federal law;
- If the employer is a not-for-profit;
- If the employer is employing youth under age 21 in a summer youth program, school to work program, or other related seasonal part-time work.

These exemptions are not automatic. They may be granted by the Common Council upon a request from the Mayor.

Does the Ordinance apply when the contractor is paying the City?

Yes, the Ordinance was amended in 2002 to apply to situations where the contractor is paying the City more than \$50,000 per year, as well as situations where the City is paying the contractor more than \$50,000 per year. For example, the Ordinance applies to several parking companies which lease land from the City and operate parking lots or ramps.

Does the Ordinance cover part-time and seasonal employees?

Yes.

When does the Living Wage rate change?

Beginning in 2008, the Living Wage rate will change automatically each January 1 based on inflation. The rate will rise to reflect the inflation in the year preceding the prior year, as measured by the Department of Labor's Consumer Price Index for all urban consumers (CPI-U). For example, the 2012 rate will be based on the average inflation in 2010.

Is an employer bound by the Ordinance if it was not mentioned in the RFP or contract?

Yes, the Ordinance applies directly to all employers who are covered by it; it does not need to be mentioned in an RFP or contract to become effective. All employers in Buffalo are responsible for knowing the law and following it when it applies.

What remedies do employees have if their employer violates the Ordinance?

Employees may file a lawsuit, or they may file a grievance with the LWC. Grievances may be made anonymously. All grievances will be kept confidential except to the extent that the New York Freedom of Information Law requires disclosure. Retaliation by an employer is prohibited and can be punished with reinstatement, back pay, or other sanctions.

What powers does the LWC have to address violations of the Ordinance?

The LWC has the power to investigate and address grievances or other allegations of non-compliance with the Ordinance. After a hearing, the LWC may recommend sanctions, which can include:

- Wage restitution for each affected employee;
- Suspension or termination of City contracts;
- Ineligibility for future City contracts for up to three years;
- Withholding payment by the City of amounts due under the Contract.

Once the LWC recommends sanctions, the department head has 30 days to impose one or more of the sanctions listed above.

What is the LWC?

The LWC was created by the 2002 amendments to the Ordinance. The City had passed the original Ordinance in 1999, but had not yet implemented or enforced it. After a lawsuit was filed demanding that the City implement the Ordinance, the City agreed to amend the Ordinance and to create a volunteer Commission to enforce it.

The LWC is composed of nine members serving three year terms. They are selected, one each, by the Mayor, Common Council, the Cornell University School of Industrial Labor Relations, the Coalition of Black Trade Unionists, the Buffalo Niagara Partnership, the Western New York Labor Federation, and the Western New York Welfare Monitoring Task Force. Two representatives are selected by the Network of Religious Communities.

Since its inception, the LWC has also benefited from volunteer help from private attorneys, the UB Law School, and Cornell University ILR. You can find more

information and all the living wage forms on the home page of the City of Buffalo website at http://www.city-buffalo.com/Home/CityServices/Living_Wage_Commission.

How do I contact the LWC?

You can reach the LWC at Cornell University ILR School, 237 Main St., Suite 1200, Buffalo, NY 14203, 716-852-4191, ext. 117.

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