



City of Buffalo Living Wage Commission Policy on Interpretation of “Professional Contracts” in Buffalo’s Living Wage Law

In defining “contract,” the Buffalo living wage law states, “This definition excludes professional contracts such as legal, architectural or engineering services.” The law does not define the word “professional” or otherwise elaborate on this sentence. The question thus arises, what other contracts would be considered “professional” so as to exempt them from the law.

In interpreting this provision of the law, the Living Wage Commission has decided to follow the definition of “professional” used by the U.S. Department of Labor in its regulations interpreting the Fair Labor Standards Act, 29 CFR Part 541. Under this definition, professionals may be “learned” or “creative.”

To qualify as a learned professional:

- The employee must be compensated on a salary or fee basis at not less than \$455 per week;
- The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify as a creative professional:

- The employee must be compensated on a salary or fee basis at not less than \$455 per week;
- The employee’s primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

The Commission interprets a “professional contract” to be a contract in which the majority of the work must be performed by learned or creative professionals because the work is predominantly intellectual in character and requires the consistent exercise of discretion and judgment or because the work requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.