



## **Frequently Asked Questions About the Living Wage Ordinance**

*February 2019*

### **What is Buffalo's Living Wage Ordinance?**

Buffalo's Living Wage Ordinance was passed unanimously in 1999 and amended in 2002, 2007, and 2019. It provides that certain workers must be paid a living wage. For 2020, the rate is \$12.33 if the worker receives health benefits from the employer and \$13.85 if the employee does not. 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 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. 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. The Ordinance also applies to all workers employed by the City itself.

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.

### **What about tipped workers?**

Employers of tipped workers may take a tip credit, so long as tips plus wages equal or exceed the living wage rate.

### **What are the employer's duties?**

All employers bidding on service contracts with the City must submit an Application for Contract committing to abide by the Living Wage Ordinance. The Application for Contract is available from the City departments or from the Living Wage Commission (LWC). 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.

### **What rate should an employee receive if the employer offers health benefits, but the employee does not use them?**

Employees are considered to be “with health benefits” only if they actually receive health benefits from the employer. The benefits must be worth at least the difference between the lower living wage rate and the higher rate. For example, in 2019, an employer must actually provide the employee with at least \$1.48 per hour in health benefits in order to take advantage of the lower living wage rate of \$12.04.

### **When does the Living Wage rate change?**

Until July 1, 2021, the Living Wage rate will change each January 1 based on inflation. The rate rises 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 rate for 2019 was based on the average inflation in 2017. Beginning July 1, 2021, the rate will change each July 1, and it will be equal to 150% of the federal

poverty line for a family of three for that year. Starting July 1, 2021, there will be only one living wage rate, regardless of health benefits.

**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, and/or they may file a grievance with the Living Wage Commission. Grievances may be made anonymously. Retaliation by an employer is prohibited and can be punished with reinstatement, back pay, or other sanctions.

**What powers does the Living Wage Commission 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.

**What is the LWC?**

The LWC was created by amendments to the Ordinance in 2002 to oversee and enforce the Ordinance. It is a volunteer citizen commission with power to investigate, hold hearings, and recommend sanctions. In most cases, the LWC is able to obtain compliance from employers through a process of information and discussion.

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.

**How do I contact the LWC?**

You can reach the LWC at Cornell University ILR School, 617 Main St., Suite 300, Buffalo, NY 14203, 716-852-4196, [lwcbuffalo@gmail.com](mailto:lwcbuffalo@gmail.com).