

RESOLUTION - Contracts

Establishing the Cuyahoga County Living Wage Program for County Contracts to provide a Living Wage and Health Benefits to employees of persons, enterprises or other entities that are awarded contracts by, for, or on behalf of the County of Cuyahoga.

WHEREAS, it is beneficial to the health and welfare of the citizens of Cuyahoga County that all workers are paid an hourly wage that enables them to live above the level of poverty; and

WHEREAS, providing workers an hourly wage that enables them to live above the level of poverty reduces the amount of taxpayer funded social service programs in this County; and

WHEREAS, the Board is committed to implement welfare reform to enable working families to rise above poverty, support their families with decent work and receive health benefits; and

WHEREAS, the Board has long supported the rights of Cuyahoga County residents to work in safe conditions for a wage adequate to support themselves and their family; and

WHEREAS, the Board has long supported the right of Cuyahoga County residents to high quality and affordable health care; and

WHEREAS, the Board desires to establish a program to ensure that the goods provided to and services performed for Cuyahoga County will meet the highest standards of quality; and

WHEREAS, for purposes of assuring the highest standards of quality, businesses and other entities contracting with the County to provide goods and/or services must employ a workforce consisting of individuals who possess the highest degree of skill available for a particular job, and who receive fair compensation for their work; and

WHEREAS, fair compensation that not only complies with federal and state wage and hour laws but is at a rate sufficient to provide a living wage will attract the highest quality workers available; and

WHEREAS, fair compensation should also include the provision of health insurance benefits, so as to provide employees of the County and employees of businesses and other entities contracting with the County to provide goods and/or services with a level of confidence and security which permits those employees to focus their full attention on the quality of their work as well as to insure the highest motivation and best quality of workmanship by employees; and

WHEREAS, the absence of health insurance benefits to employees can negatively affect worker performance and the quality of services delivered to Cuyahoga County and its residents, result in increased employee absenteeism and negatively impact local and state health programs; and

WHEREAS, the following language was adopted by this Board on April 27, 1999: “The Board supports safe and productive working conditions with equitable pay for all workers in Cuyahoga County; and The Board supports the rights of workers to organize and collectively bargain for better wages and working conditions in order to enhance an atmosphere of mutual respect for workers and management; and The Board shall make every effort to ensure that it does not do business with any enterprise that markets products or sells goods that are created by companies that exploit their workers in sweatshop conditions such as paying poverty wages, violating workplace regulations or suppressing workers’ rights;” and

WHEREAS, in accordance with the April 1999 Resolution and a series of other initiatives, the Board believes that County revenues used to purchase needed goods and services can and should be used as incentives to encourage companies doing business with the County to supply a community benefit, such as paying workers a living wage and increasing the number of workers who can access health insurance; and

WHEREAS, the Board of County Commissioners has determined that the current standard for a living wage is \$10.00, which is approximately 125% of the federal poverty guidelines for a family of three and approximately 104% of the federal poverty guidelines for a family of four and that such standard should be adjusted annually in accordance with the Consumer Price Index; and

WHEREAS, the Board of County Commissioners by adopting this program states its commitment to the goal of ensuring that all Cuyahoga County employers provide their employees a living wage and health benefits;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Cuyahoga County, Ohio that the Cuyahoga County Living Wage Program for County Contracts is hereby approved as shown on the attached **Exhibit A**.

BE IT FURTHER RESOLVED that the Clerk of the Board be, and she is, hereby instructed to transmit a copy of this resolution to _____, Director, Office of Procurement and Diversity; and one copy to _____, Purchasing Manager, Office of Procurement and Diversity; and one copy to _____, Director, Department of Development.

The Cuyahoga County Living Wage Program for County Contracts

Section 1. Definitions

For the purposes of the Cuyahoga County Living Wage Program for County Contracts (LWPCC), the following words, phrases and terms are defined as follows:

- A. *Construction, Goods and Services Contracts* means those contracts administered through the County Office of Procurement and Diversity and includes contracts or subcontracts for construction and contracts and subcontracts for the procurement of equipment, materials, supplies and services. This includes services performed on and off County-owned premises.
- B. *County* means the County of Cuyahoga County and all divisions, departments, and offices under The Board of County Commissioners.
- C. *Covered Employee* means an employee employed by a Covered Employer and working over 20 hours/week for that employer.
- D. *Covered Employer* means any business that enters into a Construction, Goods and Services Contract, as defined in Section 1.A, with the County.
- E. *Living Wage* means an hourly wage that enables a worker and a worker's family to live above the level of poverty. For purposes of the LWPCC, determination of a Living Wage shall be in accordance with the following:
 - 1. The Living Wage shall be calculated on an hourly basis and shall be at least \$10.00 per hour beginning _____.
 - 2. Thereafter, the Living Wage may be adjusted by the County on an annual basis, beginning _____, in accordance with the Consumer Price Index for Northeast Ohio as published by the Bureau of Labor Statistics, U.S. Department of Labor.
 - 3. Tipped employees, i.e., employees for whom a substantial portion of their compensation consists of tips and gratuities, shall be paid an hourly wage which when combined with the compensation received in tips, will at least equal the Living Wage.
- F. *Affordable Health Insurance Benefits* means an employer-based health insurance offering that is substantially comparable to a family health care insurance plan provided by the County to its employees. In lieu of providing health and hospital insurance coverage to its employees, the contractor shall pay to its employees at least \$1.93 per hour towards the provision of healthcare benefits for employees. This health benefits supplement shall be raised in proportion to the annual increase, in any, in the Consumer Price Index for medical care over the preceding year.

Section 2. Living Wage Requirements

- A. All covered employees are to receive the benefit of the Living Wage Requirements which include:
 - 1. a rate of pay equal to or above a Living Wage; and
 - 2. Affordable Health Insurance Benefits.
- B. If a contractor can demonstrate that it has offered reasonable health care insurance to its employees but as a group the employees have refused the health care insurance coverage, the service contractor is entitled to the same consideration and treatment in the bidding process as a service contractor who provides or agrees to provide reasonable health care insurance.
- C. All covered employees shall be given notice of their rights under the LWPC. The notice must be posted in a conspicuous place at the employees' workplace.
- D. All covered employees shall be informed that if they earn less than twelve dollars (\$12.00) per hour they may be eligible for the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32. The Covered Employer shall make available to those employees information about the EIC and forms required to secure advance EIC payments from the employer within 30 days of employment. The forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of employees.

Section 3. Compliance

- A. All businesses that enter into a Construction, Goods and Services Contract shall be required to comply with the provisions of the LWPC.
- B. The following language shall be in all Notices to Bidders, Requests for Proposals and Invitations to Bid, for all contracts solicited by the Office of Procurement and Diversity:

“The County Office of Procurement and Diversity shall require all prospective bidders to agree to comply with the applicable contract compliance procedures for the Living Wage Program for County Contracts as adopted by The Board of County Commissioners. (Adopted date)”
- C. All Goods and Services Contracts entered into by the Office of Procurement and Diversity shall contain the following language:

“This agreement is subject to the Cuyahoga County Living Wage Program for County Contracts (LWPC) and requires, among other things, that unless specific exemptions apply, all covered employers shall provide payment of a minimum level of compensation to covered employees, which also includes affordable health benefits. Failure to provide the Living Wage benefits required in the LWPC may result in termination of the contract or debarment from future contracts with the County.”

- D. The County Office of Procurement and Diversity shall require businesses submitting bids to submit documentation substantiating compliance with the LWPCCC during the term of the contract under consideration.
- E. At the beginning of each quarter, the Office of Procurement and Diversity shall file a Living Wage Report with the Clerk of the Board of County Commissioners. The Report shall include the following for each Covered Employer on a quarterly basis:
1. The names, addresses and telephone numbers of each Covered Employer and identify by name and identification number, the contract that qualifies them as a Covered Employer.
 2. The name, address and telephone number(s) of a designated local compliance person for each Covered Employer.
- F. Maintenance of Payroll Records
- Each Covered Employer shall maintain basic payroll records for all of its Covered Employees and shall preserve them for a period of three years following termination of the Covered Employer's agreement/contract with the County. The records shall contain the following for each Covered Employee:
1. name, address, job title, union membership status and job classification; and
 2. number of hours worked each day, gross wages earned, deductions made, and net wages paid; and
 3. a copy of Social Security records, and evidence of payment made thereof; and
 4. a record of fringe benefit payments, including contributions to approved plans, funds or programs, and/or additional cash payments; and
 5. any other such data as deemed appropriate by the Applicable County Department or the Board of County Commissioners.
- G. Each Covered Employer shall submit documentation quarterly to the Office of Procurement and Diversity substantiating compliance with the LWPCCC. The documentation shall be affirmed by oath or affidavit.
- H. Covered Employers shall permit County representatives to observe work being performed upon the work site, to interview employees and to examine the books and records relating to payrolls being investigated pursuant to Section 5 of the LWPCCC
- I. Organizing and Collective Bargaining Rights
- In no instance shall a Covered Employer employ individuals where such employment results in the displacement of employees covered by a collective bargaining agreement. To accommodate a free informed decision of Covered Employees joining or seeking representation by a labor organization, Covered Employers shall maintain a neutral position in any organizing drive.

Section 4. Monitoring and Enforcement

- A. The Office of Procurement and Diversity shall be responsible for monitoring Covered Employers that have entered into Construction, Goods, and General and Professional Services Contracts with the County. The Office of Procurement and Diversity shall review and monitor the sworn reports or affidavits periodically submitted by the Covered Employer to determine whether the Covered Employer is in compliance with the requirements of the LWPC. If the Office of Procurement and Diversity finds there is reason to believe that the Covered Employer is not in compliance with the LWPC, then the Office of Procurement and Diversity shall file a complaint as set forth in item (B) of this section.
- B. Any person, or the Office of Procurement and Diversity, may allege that a violation of the LWPC has occurred by filing a complaint with the Clerk of the Board of County Commissioners within 180 days of the alleged violation or knowledge thereof. A written complaint of noncompliance shall state the name and address of the person filing the complaint, the name and address of the Covered Employer alleged to have committed a violation, and the particular facts of the violation including the specific Covered Employees against whom the violation is being committed. The Covered Employees must be identified either by name or, if there is a group of Covered Employees, by job classification sufficient to identify them. Upon the filing of a complaint of noncompliance, the Clerk of the Board of County Commissioners shall acknowledge the receipt of the charge and shall forward a copy of the document to the County Administrator and the Applicable County Department.
- C. Within fourteen (14) calendar days after a complaint of noncompliance has been received by the Clerk of the Board of County Commissioners, the County shall, through the County Administrator, serve or cause to be served in person or by certified mail, a copy of the complaint of noncompliance on the Covered Employer alleged to have committed a violation of the LWPC. The County shall also advise the Covered Employer, in writing, of his or her procedural rights and obligations pursuant to this program.
- D. Investigations

The County Administrator shall conduct a preliminary investigation to determine whether a violation of the LWPC has occurred.

- 1. The County shall complete a preliminary investigation of a complaint filed within thirty (30) days of serving notice on the Covered Employer alleged to have committed a violation and the County shall take one of the following actions:
 - i. Notify the complaining party and the Covered Employer that it is not probable that a violation of the LWPC has occurred; or
 - ii. Notify the complaining party and the Covered Employer that it is probable that a violation of the LWPC has occurred. The County shall schedule informal methods of mediation pursuant to Section 6.E between the Covered Employer and the complaining party.

2. The County shall not make public in any manner and shall retain as confidential all information obtained as a result of the preliminary investigation.

E. Mediation

If the investigation leads to a finding by the County Administrator of probable cause to believe that a Covered Employer is not in compliance with the LWPCC, then the first attempt to resolve the issue will be through informal mediation between the Covered Employer and the Applicable County Department. The County Administrator shall send out notice to the Covered Employer, the affected Covered Employee(s), the complaining party and the Office of Procurement and Diversity with a time, date and location set for the mediation meeting. The mediation must be scheduled within twenty one (21) calendar days after the completion of the investigation unless either party requests it to be rescheduled and can show good cause as to why it should be rescheduled. A mediation agreement cannot be entered into without the consent the Covered Employer and the Office of Procurement and Diversity.

F. Hearing

If attempts at mediation fail to bring the Covered Employer into compliance with the LWPCC, a hearing shall be scheduled and conducted by a Hearing Officer appointed by the County Administrator. A thirty (30) day notice of hearing shall be provided to the Covered Employer, Covered Employee(s), the complaining party and the Office of Procurement and Diversity. The Hearing Officer shall issue specific findings from the hearing and make a decision of compliance or noncompliance within thirty (30) days. The decision of the Hearing Officer shall be subject to adoption, modification or rejection by the County Administrator.

G. Noncompliance

Upon a final decision by the County Administrator, the County Administrator shall notify the Board of County Commissioners of the noncompliance and make recommendations as to possible sanctions.

H. Sanctions

Any Covered Employer found not to be in compliance with the LWPCC, or who has submitted false or fraudulent information may be subject to the following sanctions imposed by the County:

1. Withholding of payment that would have been due under the contract had the Covered Employer been in compliance with the LWPCC.
2. Termination, suspension or cancellation of the contract in whole or in part.
3. Denial of the right of the Covered Employer to bid on future contracts for no more than five (5) years after the violation is found.

I. Retaliation and Discrimination Barred

A Covered Employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the County under the LWPCC or otherwise asserting his or her right to participate in any of its proceedings or to use any civil, statutory or collective bargaining remedies to enforce his or her rights under the LWPCC. The Office of Procurement and Diversity shall conduct an investigation of allegations of retaliation and/or discrimination and, if after notice and a hearing, the allegations are found to be true, the County may order appropriate sanctions, including the denial of the right to bid for a specified time period on future County contracts. Evidence that a Covered Employer has retaliated against employees in violation of this Section may be considered in determining the “lowest and best bid” on future contracts.

J. Reporting and Public Notice

The Office of Procurement and Diversity shall submit an annual Living Wage Compliance Report to the Board of County Commissioners at the last Commissioners meeting of the calendar year. This report shall include the names, addresses and telephone numbers of each Covered Employer; identify those who were found not in compliance with the Living Wage Resolution, action taken and the outcome of the action taken. The report shall also be made available to the public through publishing on the Board of County Commissioners website no later than one month after being presented at the meeting.

Section 6. Exemptions

A. Construction and Prevailing Wage Exemption

Nothing in this program shall apply to public construction work and jobs that are subject to state law pertaining to wage rates or covered by prevailing wage agreements or collective bargaining agreements.

B. Granted Exemptions

The Board of County Commissioners may through passage of this resolution, grant a partial or whole exemption from the requirements of the LWPCC. Grounds for granting exemptions may include contracts that are impacted by leases, bond covenants, grant restrictions, governmental regulations, and other similar provisions that would prohibit compliance with this resolution.

An exemption may also be granted in limited circumstances if the Living Wage would cause a substantial hardship to a nonprofit service provider. The nonprofit service provider must be able to demonstrate that it will seriously damage services it can provide to the county and it must be able to prove the salary differential between the highest to lowest paid employee is no greater than five to one.

Exemptions shall also be granted to the following:

- Employees covered by collective bargaining agreements
- Employees in summer jobs for youth, internship programs for students or teenagers and those under the age 18 unless they can prove they have been emancipated and are living on their own
- Volunteers or in job training programs

C. Procedures

Requests for all exemptions shall be submitted to the Office of Procurement and Diversity. The department will review the request and issue a recommendation to the Board of County Commissioners.

D. Contents of Exemption Requests

1. The conflicting statutory, regulatory or constitutional provision or provisions that make compliance with this Chapter unlawful, and a copy of each applicable provision; and
2. Effectual explanation and legal analysis of how compliance with this program would violate the cited provision or provisions and legal consequences that would attach if this violation were to occur.

Section 7. Severability

If any of the provisions set forth in this Program or any section, subsection, paragraph, sentence, clause, phrase or work thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

Section 8. Effective Date and Notice of Adoption

The Board of County Commissioners has adopted the Cuyahoga County Living Wage Program for County Contract effective _____ per Resolution No. _____ dated _____.