

# Proposed Local Law Number 2 Of 2021

## County Of Ulster

### **A Local Law Requiring The Payment Of A Living Wage To Employees Of Contractors And Subcontractors That Provide Services To Ulster County**

**BE IT ENACTED**, by the Legislature of the County of Ulster, as follows:

#### **SECTION 1. TITLE**

This Local Law shall be known and may be cited as the Ulster County Living Wage Act.

#### **SECTION 2. LEGISLATIVE FINDINGS AND INTENT**

The Ulster County Legislature hereby finds and declares that to promote the health and welfare of all employees that perform work for Ulster County, service contractors and sub-contractors should provide a livable wage to employees who perform work in accordance with such service contracts with the County of Ulster. The use of taxpayer dollars to promote sustenance and the creation of living wage jobs will increase consumer income, decrease levels of poverty, reinvigorate neighborhood businesses and reduce the need for taxpayer-funded social programs. Therefore, the purpose of this chapter is to ensure that employees of County contractors and subcontractors earn an hourly wage that is sufficient for a family of four to live at or above the federal poverty level.

#### **SECTION 3. DEFINITIONS.**

For the purposes of this local law, the following terms shall have the following meanings:

- A. County: The County of Ulster and any division, subdivision, office, department, board, commission, bureau thereof.
- B. Contractor: Any person that enters into a Service Contract with the County.
- C. Covered Employee and/or Employee: An employee, either full-time or part-time, employed by a Covered Employer in, on or for the project or matter subject to a Service Contract. This definition shall include any employee who is employed as an employee of a Contractor or Subcontractor on or under the authority of one or more Service Contracts and who expends any of his or her time thereon. This definition shall not include volunteers.

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- D. Covered Employer: Any Contractor or Subcontractor directly involved in providing a Covered Service to the County.
- E. Covered Service: any service provided to the County of Ulster including but not limited to food-service, janitorial, security, parking attendants, landscaping, clerical and waste management.
- F. Living Wage: A wage equal to the rates established under paragraph B of section 4 herein.
- F. Person: One or more of the following or their agents, employees, representatives and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, fiduciaries and all other entities recognized by the County of Ulster.
- G. Service Contract: A contract that involves an expenditure by or through the County of at least fifty thousand dollars (\$50,000.00) in a fiscal year awarded by the County to a Contractor for the furnishing of services to or for the County, excluding the purchase or leasing of goods or other property.
- H. Subcontractor: Any person, other than an employee, that enters into a contract with a Contractor to assist the primary Contractor in performing a Service Contract.

**SECTION 4. LIVING WAGE REQUIREMENT**

- A. For every Service Contract entered on and after September 1, 2021, compensation for Covered Employees employed by Covered Employers shall be set in an amount no less than the Living Wage, in addition to retirement, health or other benefits received by the Covered Employee.

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- B. The Living Wage shall be an amount no less than fifteen (\$15.00) dollars per hour worked, in addition to retirement, health or other benefits received by the covered employee. This amount may be increased by Resolution of the County Legislature to take into account current market conditions (e.g. inflation, changes in the consumer price index). Any such increase in the Living Wage shall be posted on the website for the Ulster County Purchasing Department.

#### **SECTION 5. EXEMPTIONS AND EXCLUSIONS**

- A. Any provider of Covered Services to the County or its Departments may submit a written application for an exemption on a form provided by the Department of Purchasing. The Purchasing Director (Director), or designee, may require the provider to submit additional information or documentation to make a determination regarding the exemption request. Within 30 days of receiving a completed application and supporting documentation, if any, the Director must either grant or deny the applicant's request for an exemption and must notify the applicant of his or her determination. Notice of such determination shall also be filed with the Clerk of the Legislature within 10 days of making any such determination. All requests for exemption shall be reviewed on a case-by-case basis. The Purchasing Department shall publish guidelines for exemptions on its website.
- B. No provision of this local law shall supplant or contradict the terms of existing collective bargaining agreement(s), or any provision of Federal Law or New York State Law.
- C. This local law shall not apply to Service Contracts awarded utilizing New York State Office of General Services or federal Government Services Administration procurement.

#### **SECTION 6. REQUEST FOR PROPOSALS AND SERVICE CONTRACTS**

All requests for proposals and Service Contracts subject to this local law shall include the following language:

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A. This contract is subject to the Ulster County Living Wage Act. It requires that, absent an exemption, all Contractors having a Service Contract with the County shall pay their employees the Living Wage then in effect for the period during which services are being covered by this contract. The current Living Wage may be found on the website for the Ulster County Purchasing Department.

B. All bids or proposals shall include certification that the Contractor will comply with the Ulster County Living Wage Act.

C. The County shall have the authority to suspend or terminate a Service Contract and consider other penalties for violations of the Ulster County Living Wage Act.

**SECTION 7. RETALIATION BARRED**

A. A Covered Employer shall not discharge, reduce the compensation of, or otherwise discriminate against an Employee for making a complaint, participating in any proceedings, reporting non-compliance, or otherwise asserting his or her rights under this local law.

B. A Covered Employer shall not use any payments received under a County Service Contract to discourage, impede, or promote unionization, including but not limited to the preparation or distribution of materials which advocate for or against unionization, holding meetings intended to influence employees to support or resist unionization, hiring legal counsel or other consultants to provide advice or assistance in discouraging, impeding, or promoting unionization, or otherwise acting to impede a union from communicating with employees or fulfilling its representational responsibilities.

**SECTION 8. OBLIGATIONS OF COVERED EMPLOYERS**

A. A Covered Employer shall comply with the Living Wage and other requirements of this local law.

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- B. A Covered Employer shall post in a conspicuous place on its premises, where notices to Employees and applicants for employment are customarily posted, a notice informing Employees of their rights under this local law. Such notice shall also state the current Living Wage rate and the procedure for filing a complaint pursuant to this Local Law.
- C. A Covered Employer shall maintain payroll records with the name, job title, hourly wage rate and benefits paid to each Covered Employee and shall submit a certified payroll upon request. Covered Employers shall maintain related payroll records for a period of five (5) years after termination of an individual's employment.
- D. All invoices submitted by a Covered Employer shall be accompanied by certification that the Covered Employer has paid all Covered Employees an amount no less than the Living Wage then in effect.
- E. A Covered Employer shall permit access by the County to work sites and payroll records to investigate and monitor compliance with this Local Law on prior notice to Covered Employer during normal business hours.

**SECTION 9. COMPLIANCE FOR CONTRACTORS AND SUBCONTRACTORS**

- A. The County shall develop rules and regulations to receive and investigate complaints, and procedures to determine compliance with this Local Law.
- B. Upon a determination that a Covered Employer has not complied with a provision of this Local Law, the County shall provide the Covered Employer with written notice of such non-compliance. The notice shall include a demand for compliance within thirty (30) days, a warning that the Service Contract may be suspended or terminated after such date for non-compliance, and a statement that compliance must be demonstrated by submission of payroll records to the County that establish proof of restitution made to affected workers.

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- C. A Covered Employer may request a hearing within thirty (30) days after receipt of a notice of non-compliance. The County shall conduct a hearing within thirty (30) days at which the parties may present documentation. Thereafter, the County shall issue written findings and a decision within thirty (30) days subject to the provisions of section 10(E).
- D. A Covered Employer shall have the right to appeal a determination of noncompliance in an article 78 proceeding in New York State Supreme Court.
- E. If a Covered Employer fails to comply with a demand for compliance within thirty (30) days, or does not prevail after a hearing, the County shall impose any or all of the following:
  - (1) suspend or terminate the Service Contract and, as yet, unpaid;
  - (2) demand repayment of monies provided under the Service Contract in whole or in part; and
  - (3) require restitution in the form of payment by the Covered Employer to the Employees of any unpaid living wages.
- F. Service Contracts payments that have been suspended for non-compliance according to this section may be renewed, but only after the Covered Employer submits written proof satisfactory to the County that the Covered Employer has come into full compliance with this local law.

**SECTION 10. ENFORCEMENT**

- A. A Covered Employee who believes that a Covered Employer has violated any provision of this local law may file a written complaint with the County within six (6) months of such violation. The County shall make complaint forms available upon request in English and Spanish.
- B. The County shall develop rules and regulations to receive and investigate complaints and procedures to pursue the County's obligations as outlined in sections (c) through (e) of this section.

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- C. Within thirty (30) days of receiving a written complaint, the County shall provide such Covered Employer with a notice of the allegations contained in the complaint. Within thirty (30) days thereafter, the Covered Employer shall submit a response in writing to the County. If the Covered Employer denies the complaint or fails to respond, the County shall conduct an investigation. Within sixty (60) days of the initiation of an investigation, the County will issue a written determination as to whether probable cause exists to support the complaint.
- D. Within thirty (30) days of a finding of cause to support the complaint, the County shall issue a hearing notice to the employer. No less than thirty (30) days after the issuance of the hearing notice, the County shall conduct a hearing in which the County shall have subpoena powers, and the parties shall have the right to present evidence and to be represented by counsel. The County may delay or extend such a hearing by no more than thirty (30) additional days at the request of a Covered Employer or based on a determination by the County that it needs more time to prepare for a hearing.
- E. Within thirty (30) days of the conclusion of the hearing, the County shall issue its written findings and a written decision. The County may delay the date by which it will issue its written findings and decision by no more than two (2) increments of thirty (30) days each if the County determines that it needs more time to review the evidence related to a complaint. In issuing its written decision:
  - (1) A finding of noncompliance with section 4, section 7, or section 8 of this local law shall be accompanied by a decision to impose, at the end of thirty (30) days, any or all of the penalties listed in section 9(E) unless the employer submits written proof satisfactory to the County that it has come into full compliance with the ordinance before the thirtieth (30th) day. Service Contracts that have been suspended for non-compliance according to this section may be renewed, but only after the Covered Employer submits written proof satisfactory to the County that the Covered Employer has come into full compliance with this local law; and

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- (2) An aggrieved party has the right to appeal such decision in an article 78 proceeding in New York State Supreme Court.
  
- F. In lieu of seeking redress through a complaint to the County under paragraphs (a), (b), (c) and (d) of this section, a Covered Employee may elect to bring an independent civil action against a Covered Employer in a court of competent jurisdiction.
  
- G. The court may award damages, costs and attorney fees to the prevailing party, and may direct any other remedy at law or equity, including but not limited to injunctive relief, reinstatement, back wages and punitive damages.
  
- H. The County shall not disclose the identity of an employee to a Covered Employer except where necessary to investigate, pursue or defend a complaint.

**SECTION 11. REVERSE PREEMPTION**

This article shall be null and void on the day that federal or statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Ulster. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

**SECTION 12. SEVERABILITY**

If any word, phrase, clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.



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**SECTION 13. EFFECTIVE DATE**

This law shall be effective upon filing in the Office of the Secretary of State.