

Proposed Local Law Number 3 Of 2022

County Of Ulster

A Local Law Amending Local Law No. 6 Of 2021, A Local Law Requiring The Payment Of A Living Wage To Employees Of Contractors And Subcontractors That Provide Services To Ulster County, In Relation To Living Wage For Social And Human Services

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

SECTION 1. LEGISLATIVE FINDINGS AND INTENT

The Ulster County Legislature hereby finds and declares that the continued COVID health crisis in Ulster County has created staffing shortages and increased the cost of living for housing, food and other necessities.

The Ulster County Legislature hereby further finds that in order to retain qualified people to accept jobs and perform much needed health and mental health programs in Ulster County, the living wage requirement for contractors and sub-contractors providing social and human services should be raised.

SECTION 2. Section 3. Definitions. of Local Law No. 6 of 2021 is hereby amended to read as follows:

- 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 **or Social and Human Services 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 **or Social and Human Services 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 **or Social and Human Services Contracts** and who expends any of his or her time thereon. This definition shall not include volunteers.
- D. Covered Employer: Any Contactor 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.

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- F. Living Wage: A wage equal to the rates established under paragraphs B and D 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. **Social and Human Services 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 with the objective of meeting human needs through an interdisciplinary knowledge base, focusing on prevention as well as remediation of problems, and maintaining a commitment to improving the overall quality of life of service populations. Social and Human Services Contracts shall include but not be limited to the following fields: social work, psychology, therapy, counseling, sociology, correctional work, and emergency management.**
- ~~H. I~~ 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 or **Social and Human Services Contract**.

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SECTION 3. Section 4. Living Wage Requirement. of Local Law No. 6 of 2021 is hereby amended to read as follows:

- A. For every Service Contract entered on and after January 1, 2022, 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.
- B. The Living Wage as applied in paragraph A above 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.
- C. For every Social and Human Services Contract entered on and after the effective date of this law, 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.
- D. The Living Wage as applied to paragraph C above shall be an amount no less than twenty (\$20.00) 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 4. Section 6. Request For Proposals And Service Contracts. of Local Law No. 6 of 2021 is hereby amended to read as follows:

All requests for proposals, ~~and~~ Service Contracts, **and Social and Human Services 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 **or Social and Human Services 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 **or Social and Human Services Contract** and consider other penalties for violations of the Ulster County Living Wage Act.

SECTION 5. Section 7. Retaliation Barred. of Local Law No. 6 of 2021 is hereby amended to read as follows:

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 **or Social and Human Services 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 6. Section 9. Compliance For Contractors And Subcontractors. of Local Law No. 6 of 2021 is hereby amended to read as follows:

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- 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 or Social and Human Services 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.
- 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 or Social and Human Services Contract** and, as yet, unpaid;
 - (2) demand repayment of monies provided under the **Service Contract or Social and Human Services 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 Contract or Social and Human Services Contract** 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.

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SECTION 7. Section 10. Enforcement. of Local Law No. 6 of 2021 is hereby amended to read as follows:

- 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.
- 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:

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- (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 or Social and Human Services 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
 - (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 8. 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.

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SECTION 9. 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.

SECTION 10. EFFECTIVE DATE

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