

## DEPARTMENT OF EMPLOYMENT SERVICES

### NOTICE OF FINAL RULEMAKING

The Director of the Department of Employment Services, pursuant to the authority set forth in sections 110 of the Way to Work Amendment Act of 2006 effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.10. (2006 Repl.)) (“Living Wage” or “Act”) and Mayor’s Order 2006-122, dated September 27, 2006, hereby gives notice of the adoption of a new Chapter 10 entitled (Living Wage) to Title 7,(Employment Benefits), of the District of Columbia Municipal Regulations (DCMR). These rules implement the provisions of the Act.

Notice of Proposed Rulemaking was published in the *D.C. Register* on July 16, 2010 at 57 DCR 6189. Comments were received and considered. No substantive changes were made to the text of the proposed rules. One technical change was made to section 1099 (Definitions) which now identifies the first paragraph as subsection 1099.1. The first paragraph is now identified at subsection 1099.1. These rules will become effective on the date of publication of this notice in the *D.C. Register*.

**A new chapter 10, entitled (Living Wage) is added to title 7, (Employment Benefits), of the DCMR, to read as follows:**

#### CHAPTER 10 LIVING WAGE

##### **1000 PURPOSE AND SCOPE**

- 1000.1 The purpose of this chapter is to establish principles and guidance for the implementation of the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.1, *et seq.*) (Act).
- 1000.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be decided in accordance with this chapter.
- 1000.3 This chapter shall apply to all contracts or agreements for government assistance entered into after June 8, 2006, if the amount of the contract or assistance meets the requirement for coverage under the Act. A renewal or extension of a contract or an assistance agreement entered into after June 8, 2006, shall be subject to the Act, if the amount of the contract or government assistance meets the requirement for coverage under the Act.

##### **1001 LIVING WAGE PAYMENT REQUIREMENT**

- 1001.1 All recipients of District of Columbia government contracts in the amount of one hundred thousand dollars (\$100,000) or more, and all recipients of government assistance in the amount of one hundred thousand dollars

(\$100,000) or more, shall pay to their affiliated employees, at minimum, the living wage required by the Act. The living wage shall be paid for the duration of the contract or government assistance.

1001.2 The living wage shall be paid to employees of the District of Columbia government commencing March 1, 2006, unless the employee's wage is established by a collective bargaining agreement, federal law, or grant, in which case the wage established by the collective bargaining agreement, federal law, or grant shall continue for such time as the collective bargaining agreement, law, or grant remains in effect.

1001.3 Subcontractors who receive fifteen thousand dollars (\$15,000) or more from contractors whose contracts are subject to the Act shall pay their affiliated employees, at minimum, the living wage required by the Act.

1001.4 Subcontractors who receive fifty thousand dollars (\$50,000) or more from recipients of District of Columbia government assistance funds shall pay their affiliated employees, at minimum, the living wage required by the Act.

1001.5 Subcontractors of exempt contractors or exempt recipients shall be exempt from the requirements of the Act.

## **1002 AMOUNT OF LIVING WAGE**

1002.1 The amount of the living wage shall be eleven dollars and seventy-five cents (\$11.75) per hour, regardless of whether health benefits are provided.

1002.2 The amount of the living wage shall be adjusted pursuant to section 103(c) of the Act (D.C. Official Code § 2-220.03(c)).

## **1003 NOTICES TO CONTRACTORS AND SUBCONTRACTORS**

1003.1 All contracts and agreements for government assistance subject to the Act shall include provisions and language incorporating the requirements of the Act as to coverage (section 103, D.C. Official Code § 2-220.03), notices (section 106, D.C. Official Code § 2-220.06), record keeping (section 107, D.C. Official Code § 2-220.07), and enforcement (section 108, D.C. Official Code § 2-220.08).

1003.2 Each recipient of a District of Columbia government contract or of government assistance subject to the Act shall provide written notification to each of its subcontractors subject to the Act of the requirements of the Act, as to coverage (section 103, D.C. Official Code § 2-220.03) notices (section 106, D.C. Official Code § 2-220.06), record keeping (section 107,

**1005 CREATION AND RETENTION OF RECORDS**

- 1005.1 Each recipient of a District of Columbia government contract or government assistance subject to the Act, and their subcontractors subject to the Act, shall retain payroll records created and maintained in the ordinary course of business pursuant to District of Columbia law for a period of three (3) years from the payroll date for affiliated employees eligible for the living wage, as set forth in section 107 of the Act (D.C. Official Code § 2-220.07). Each recipient shall be responsible for keeping and maintaining records that differentiate between hours paid from the contract or government assistance and other funding sources.
- 1005.2 The director or the chief official of an agency or other entity of the District of Columbia government which issues contracts or government assistance may request from a contractor, recipient, or subcontractor subject to the Act an affirmative statement acknowledging the application of the Act to the contractor, recipient, or subcontractor.
- 1005.3 The director or chief official of an agency or entity of the District of Columbia government which issues contracts or government assistance may request from any contractor, recipient, or subcontractor subject to the Act a list of all affiliated employees of the contractor, recipient, or subcontractor.
- 1005.4 A contractor, recipient, or subcontractor receiving a request under §§ 1005.2 or 1005.3 shall provide the affirmative statement or list of affiliated employees, in writing, utilizing a form specified by the Director. The affirmative statement or list of affiliated employees shall be signed by the chief executive officer of the contractor, recipient, or subcontractor, and the signature shall be notarized.

**1006 ENFORCEMENT**

- 1006.1 A complaint concerning the payment of wages required by the Act shall be made in accordance with, and shall be subject to, the provisions of an Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §§ 32-1301, *et seq.*).
- 1006.2 With respect to contracts, a complaint concerning a form of non-compliance with the Act, other than one about the payment of wages, shall be made to the Contracting Officer and decided as provided in section 803 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-308.03).

1006.3 With respect to grants of government assistance, a complaint concerning a form of non-compliance with the Act, other than one about the payment of wages, shall be made to the grant administrator in accordance with the terms of the grant.

**1007 EXEMPTIONS**

1007.1 The following types of contracts, government assistance, and employment are exempt from the requirements of the Act:

- (a) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (b) Existing and future collective bargaining agreements; provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (c) Contracts for electricity, telephone, water, sewer, or other services delivered by a regulated utility;
- (d) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (e) Contracts or other agreements awarded to recipients that provide trainees with additional services, including, but not limited to, case management and job readiness services; provided, that the trainees do not replace employees subject to the Act;
- (f) An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per week; provided, that he or she does not replace an employee subject to the Act;
- (g) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia government; provided, that the tenant or retail establishment did not receive direct government assistance from the District government;
- (h) Employees of nonprofit organizations that employ not more than fifty (50) full-time equivalent individuals and that qualify for taxation exemption pursuant to section 501(c)(3) of the Internal

Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

- (i) Medicaid provider agreements for direct care services to Medicaid recipients; provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons, as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (j) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

## **1008 WAIVERS**

- 1008.1 The Director may exempt a recipient from the requirements of the Act if the waiver is approved by the Council of the District of Columbia.
- 1008.2 A recipient requesting a waiver shall submit a signed written application to the Director and shall demonstrate that compliance with the Act will constitute a significant financial hardship to the recipient that will result in either:
  - (a) A layoff of a significant number of employees;
  - (b) A substantial downsizing of the recipient's business entity; or
  - (c) The inability of the recipient to meet its payroll.
- 1008.3 All applications for waiver shall include the recipient's name, telephone number, and the identity and authority of the individual requesting the waiver. The application shall also identify the name, address, and telephone number of any individual or entity that prepared any of the financial information submitted in support of the waiver request. The application shall also identify the name, address, and telephone number of any subcontractor of the recipient that is subject to the Act and is involved with the contract or government assistance for which the waiver is sought. The application shall also contain the number of affiliated employees involved with the contract or government assistance.
- 1008.4 The Director may require any recipient applying for a waiver to submit certified financial or other records that the Director believes may be

necessary to decide the waiver request, including financial or other records not otherwise required by § 1005.

- 1008.5 The Director shall decide all waiver requests within thirty (30) business days after the submission of the application for waiver or as soon as practicable thereafter. The thirty (30) business day period shall commence on the day of the submission of the application for waiver or the date on which any final additional requested document is submitted to the Director, whichever occurs later.
- 1008.6 Submission of a request for waiver shall not relieve the recipient from complying with the Act during the time the application for waiver is pending.
- 1008.7 The Director shall issue a written recommendation or decision on all applications which are to be granted. If the Director does not issue a recommendation or decision within the thirty (30) business day period established by § 1008.5, the application shall be considered denied.
- 1008.8 An application for waiver which is granted by the Director shall not be effective unless the waiver is approved by the Council of the District of Columbia, by act, as set forth in section 109 of the Act (D.C. Official Code § 2-220.09).

## 1099 DEFINITIONS

- 1099.1 When used in this chapter, the following terms shall have the meanings ascribed:

**Affiliated employee** – an employee of a recipient who receives compensation either directly from the government contract or assistance or from the government funds paid to a subcontractor. The term “affiliated employee” applies to both full-time or part-time employees. The term “affiliated employee” does not apply to employees who perform only intermittent or incidental services for the contract. The term “affiliated employee” does not apply to employees of recipients who do not receive compensation directly from government funds.

**Contract** – a written agreement between a recipient and the District of Columbia government or any entity of the District of Columbia government for the provision of services. Where contractual agreements between the District of Columbia government and recipients are for the provision of services to multiple individuals on an individual basis, and the individual selects the service provider, the payments for each individual shall be treated as a separate contract for purposes of the Act.

**Director** – the Director of the District of Columbia Department of Employment Services.

**Disaster** – a natural disaster such as a tornado, blizzard, flood, fire, earthquake, or epidemic which causes substantial physical damage to the District of Columbia, or an economic disaster which results in a substantial loss of District of Columbia government revenues for at least three (3) consecutive months due to an economic depression, recession, or other downturn in the national or local economy.

**Government assistance** – a grant, loan, or tax increment financing that is received from an agency, commission, instrumentality or other entity of the District of Columbia government and results in a financial benefit to a recipient.

**Living wage** – the minimum hourly wage rate required under the Act, as set forth in § 1002.

**Mayor** – the Mayor of the District of Columbia.

**Recipient** – an individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, or any other form of business or business entity that enters into a contract with, or receives government assistance from the District of Columbia government.