

Elements of a Living Wage Ordinance (Outline of Questions to Grapple With)

I. "The Basics"

1. Wage level

- Choosing base wage
- Indexing (CPI or state median wage increase)

2. Health benefits

- Calculate a two-tiered living wage (for jobs with and without benefits) and be able to defend it (e.g. base it on standard coverage from state's biggest insurer)
- We suggest: officially define "health benefits" as simply equivalent to the gap between your required wage for those who pay benefit and those who don't
- Other options (i.e. more detailed description of actual health plan) = ERISA pre-emption danger
- Indexing (can use specific CPI health care cost index)

3. Scope of coverage

- Direct city and/or county employees?
- City/county contractors and/or subcontractors?

- Recipients of city/county economic development assistance/subsidies? (how to define this?)
 - Contractors of economic development assistance recipients?
 - Tenants or leaseholders of economic development assistance recipients?
- Tenants on city property? (or city as tenant?)
- Public (or quasi-public) authorities, corporations or agencies (ports, airports, economic development arms, school districts, transit agencies, public housing authorities).

4. Covered workers

- Part time/full time/temporary/independent contractor -- be explicit on this
- All workers employed by covered employer or restricted just to those on contract? (suggest latter)
- Covered for hours worked on project only? (suggest yes)

5. Thresholds for coverage

- By dollar value of contract or subsidy?
- By number of employees? (flag unscrupulous practice possibility here)
- Are there different thresholds for different types of assistance? For for-profits and non-profits?

- Make clear that separate contracts from same company in same year be aggregated
 - For contracts for any service to city? = if we can
 - For contracts for the same service to the city? = definitely

6. Monitoring/Disclosure, Enforcement

- Which city agency is enforcement agency?
- What is the process for determining which firms are covered?
- What company reporting will be required? Payroll submission?
- Other monitoring obligations of city? Site visits? Mailed survey to workers?
- How will workers be notified of rights? upon hire? posting requirement?
- How will worker complaints be handled? immediate city investigation? confidentiality insured?
- How will violations be handled? written notice? appeals process?
- Annual reporting on LW compliance to city council? public hearings?
- Community advisory board mandated in ordinance in order to give activists continued voice in implementation and enforcement

7. Sanctions

- Who metes out sanction?

- a) Which city/county agency responsible
- b) Private right of action to permit workers, unions or community organizations to enforce = draft broadly
- What kind of sanctions?
 - a) Termination of contract/subsidy
 - b) Clawback (pay back contract/subsidy monies)
 - c) Fines paid to city/county
 - d) Back-pay to workers
 - e) Punitive damages to workers and/or city/county
 - f) Barred from future contracts/subsidies, etc. (for how long?)
 - g) Reported to appropriate state or federal agency
- City must/can pursue any and/or all?

8. Duration of coverage

- On contracts or leases? (suggest for the term of contract or lease)
- For subsidies?
 - a) Indefinitely (best option)
 - b) Until subsidy ends (loan is paid off, tax abatement phased out, etc)
 - c) Until subsidy ends or X years, whichever is LONGER
 - d) 5 years (several ordinances have used this random measure)

II. Possible "Add-ons"

1. Community hiring or at least community posting of new positions
2. Vacation days and/or sick leave = both socially important and is a benefit that is not eroded by resulting higher taxes or loss of means-tested benefits or EITC
3. Worker retention
4. Collective bargaining supercession
5. Other labor-friendly
 - a. Ban on use of public money for anti-union activities
 - b. Right of equal access by unions to workplaces located on city/county-owned or controlled property
 - c. Requirement that city/county contractors minimize risk of disruptions associated with labor strife by agreeing to use card check as means of employee preference regarding unionization
6. Community oversight board/Living Wage Advisory Committee
7. Up-front reporting and regular disclosure of wage and hiring info
Job creation requirements -- maximum cost per job (e.g. must create X jobs for every \$10,000)
8. Incentives for training workers

III. Other thorny issues (exemptions to consider or avoid)

1. Construction or other work covered by prevailing wage laws

2. Contracts for goods, as opposed to service contracts = generally not covered
3. "Hardship" waivers (if at all, should have tough and measurable eligibility criteria)
4. Non-profits (CEO to lowest paid worker ratio cutoff, phase-ins, employee thresholds, pass-through requirements, budget increase contingencies)
5. Loans (market rate vs. below market rate)
6. Summer youth jobs programs
7. Welfare-to-work trainees or "workfare" workers
8. Small business
9. Minority-owned biz