

Chapter 9.128

CITY SERVICE CONTRACTOR MANDATORY MINIMUM WAGE

Sections:

9.128.010	Definitions.	9.128.040	Enforcement of Chapter Requirements.
9.128.020	Minimum Local Wage Payment Requirements for City Service Contractors.	9.128.050	Effective Date and Implementation.
9.128.030	Supercession by Collective Bargaining Agreement.		

9.128.010 Definitions.

Unless otherwise expressly stated or the context clearly requires otherwise, the following terms shall be defined as follows:

A. EMPLOYEE.

1. **Generally.** The term "Employee" shall refer only to those individuals who directly provide services to the City on behalf of a City Service Contractor and shall not include those employees who would typically be considered administrative or support staff employees, such as, but not limited to, employees performing administration, payroll, personnel, maintenance, or similar employee services for the Contractor. The term Employee shall also be used as that term is generally defined and used in the federal Fair Labor Standards Act of 1938 (29 USC Section 201 et seq., hereinafter the "FLSA") and shall not include those employed persons exempt from the minimum wage or overtime requirements of the FLSA or any person who works as an "executive" or "professional," as such terms are defined in the FLSA.

2. **Exemption for Handicapped Individuals and Apprentices.** For the purposes of this Chapter, an employee shall not include a "handicapped employee" employed pursuant to a special license issued under Sections 1191 and 1191.5 of the state Labor Code or an "apprentice" or "learner" employed pursuant to a special license issued under Section 1192 of the state Labor Code.

3. **Exemption for Student Interns.** For the purposes of this Chapter, an employee shall also not include a student intern which shall be defined as a person receiving educational or school credit at a duly licensed and accredited school or educational institution as part of or in connection with his or her employment or service with the City Service Contractor.

B. MANDATORY MINIMUM LOCAL WAGE. A wage payment at an hourly rate of Fourteen Dollars (\$14.00) per hour, which wage amount shall be adjusted upward annually each July 1st, beginning in 2006, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California, provided that no such annual adjustment may exceed the amount of six percent (6%).

C. CITY SERVICE CONTRACTOR. A person or other legal entity (other than a public entity or a nonprofit entity) which enters into one or more contracts with the City to provide services to the City (other than recreation services to the public), where the amount paid by the City to the person or entity may exceed or exceeds Fifteen Thousand Dollars (\$15,000) when such compensation is calculated on a City fiscal year basis. A City Service Contractor shall not include a contractor who provides services which are merely incidental to the City's purchase of goods or supplies from that Contractor, such as installation services related to the City's use of the goods or supplies being obtained.

D. BASIC MEDICAL INSURANCE COVERAGE. For the purposes of this Chapter, Basic Medical Insurance Coverage must include, but need not be limited to, offering the employee insurance coverage for the following health and medical care expenses of the Employee:

1. Emergency hospital care and hospitalization care with the payment of a patient co-pay amount not exceeding the maximum per emergency room visit and hospitalization care co-pay and patient deductible amount paid by a City employee under the City's medical insurance coverage plans;

2. Prescription medication coverage with the payment of a patient co-pay amount not exceeding the maximum per prescription co-pay and patient deductible amount paid by a City employee under the City's medical insurance coverage plans;

3. Access to preventative medical care by a licensed physician or surgeon with the payment of a co-pay and patient deductible amount not exceeding the maximum per visit co-pay amount paid by a City employee under the City's medical insurance coverage plans.

E. SUPPLEMENTAL EMPLOYEE BENEFITS COVERAGE. For the purposes of this Chapter, Supplemental Employee Benefits Coverage must include, in addition to Basic Medical Insurance Coverage and Compensated Leave for the Employee, offering to the Employee both of the following:

1. Basic Medical Insurance Coverage for the Employee's spouse, domestic partner, or family (at the Employee's option) with the Employee's share of the cost of the medical insurance coverage provided not exceeding five percent (5%) of the Employee's average gross monthly wages for the previous twelve months; and at least one of the following additional supplemental Employee benefits:

2. An Employee pension or deferred compensation retirement plan under circumstances where the Service Contractor offers to make an Employer contribution to the plan of not less than five percent (5%) of the Employee's average gross monthly wages for the previous twelve (12) months, and where the plan is regulated and recognized by the federal Employee Retirement Income Security Program Act (hereinafter referred to as "ERISA," 29 USCA §1001 et seq.);

3. Child care or "dependent" care (or monetary assistance for child or dependent care needs) for a dependent(s) of the Employee under circumstances where the cost of the child or dependent care is funded or paid in full by the Employer and where the care is duly licensed and certified by the State. For the purposes of this Chapter, the term "dependent" shall be as that term is used and defined in the federal Internal Revenue Code.

4. The equivalent of Ten (10) Eight (8) hour days of Compensated Leave to the Employee over and above the Compensated Leave as such Compensated Leave is defined in Section 9.128.010(F) hereof.

5. Any additional employee benefit or employee benefit program which the City's Living Wage Advisory Committee, at the request of a City Service Contractor, deems appropriate to qualify as an optional Supplemental Employee Benefit under this subsection E. Examples of additional benefits or benefit programs which may qualify under this subparagraph would be the following: 1. dental insurance coverage for the Employee and the employee's family; 2. life and accidental death or disability insurance for the Employee; 3. medical or health insurance plans which provide out-patient services, such as physical therapy, speech therapy, or mental health or substance abuse counseling and assistance.

F. COMPENSATED LEAVE TIME. For the purposes of this Chapter, the term "Compensated Leave" shall mean the following:

1. Full-Time Employees. Providing not less than three (3) compensated days off per calendar quarter worked to each full-time Employee.

2. Part-Time Employees. Providing the appropriate pro-rated portion of the Compensated Leave required by Subsection (F)(1) above to each part-time Employee, with the pro-ration being that percentage of time the part-time Employee has worked per week (on average) during the previous twelve weeks, with forty hours per week being the equivalent of 100 percent.

3. Full-Time and Part-Time Employee Defined. For the purposes of this section, a "full-time" Employee shall mean an employee who has worked for the Service Contractor forty (40) or more hours per week on average for any ten (10) weeks of the previous twelve-week period. Any Employee who is not a full-time Employee is a part-time Employee.

"Compensated Leave" shall mean that the Employee is allowed leave time and is compensated at the same rate of pay which he or she would have received had they worked a regular day of work for each day of leave time used by the Employee.

Nothing herein shall preclude an Employer from imposing a minimum employment period upon the use of compensated leave provided such minimum period is consistent with the requirements of state law. (Ord. 5384, 2006.)

9.128.020 Minimum Local Wage Payment Requirements for City Service Contractors.

A. MANDATORY MINIMUM LOCAL WAGE.

1. City-Owned or -Operated Work Buildings and Locations. Except as provided in Subsections (B) and (C) hereof, any City Service Contractor providing services to the City shall pay at least the Mandatory Minimum Local Wage to all Employees of the Service Contractor who work at a building, site, or location owned or operated by the City for those hours of the Employee's work at the City building, site, or location and for those work hours at other work locations which can be directly attributed to the services provided to the City by the Service Contractor.

2. Work Sites Located at Non-City-Owned or -Operated Sites. Except as provided in Subsections (B) and (C) hereof, for those City Service Contractors where the work performed under a City Service Contract does not occur at a building, site, or location owned or operated by the City, the Service Contractor shall pay a Mandatory Minimum Local Wage to all Employees for those hours of the Employee's work which can be directly attributed to the services provided to the City by the Service Contractor.

B. EMPLOYEES RECEIVING BASIC MEDICAL INSURANCE COVERAGE AND COMPENSATED HOLIDAYS. City Service Contractors subject to the Mandatory Minimum Local Wage requirement of Subsection (A) hereof which provide an Employee with both Basic Medical Insurance Coverage at no cost to the Employee and Compensated Time-Off may pay a hourly wage of not less than Twelve Dollars (\$12.00) to the Employee instead of the Mandatory Local Minimum Wage, which wage amount shall be adjusted upward annually each July 1st, beginning in 2006, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California, provided that no such annual adjustment may exceed the amount of six percent (6%).

C. EMPLOYEES RECEIVING SUPPLEMENTAL EMPLOYEE BENEFITS IN ADDITION TO BASIC INSURANCE COVERAGE. City Service Contractors subject to the Mandatory Local Minimum Wage requirement of Subsection (A) hereof which provide Supplemental Employee Benefits Coverage may pay an hourly wage of not less than Eleven Dollars (\$11.00) instead of the Mandatory Local Minimum Wage, which wage amount shall be adjusted upward annually each July 1st, beginning in 2006, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California, provided that no such annual adjustment may exceed the amount of six percent (6%).

D. ADJUSTMENT OF SERVICE CONTRACT AMOUNT. The service contract amount set in Section 9.128.010(C) hereof shall be adjusted upward annually each July 1st, beginning in 2006, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California, provided that no such annual adjustment may exceed the amount of six percent (6%). (Ord. 5384, 2006.)

9.128.030 Supercession by Collective Bargaining Agreement.

The provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth in such collective bargaining agreement in express written terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute an express waiver of all or any part of the provisions of this Chapter by the represented employees. (Ord. 5384, 2006.)

9.128.040 Enforcement of Chapter Requirements.

A. COMPLIANCE – CONTRACTUAL OBLIGATION. Every City Service Contract (or any amendment thereto) shall contain express contract provisions requiring the City Service Contractor (as well as all subcontractors, agents, or assignees of the Service Contractor which perform work for the City pursuant to the Service Contract) to comply with the requirements of this Chapter as they exist on the date when the Contractor entered into its Contract or the date when such Contract is amended.

A breach of the applicable requirements of this Chapter, as determined by the City, shall constitute a breach of the Service Contract and may, as shall be expressly provided in all City Service Contracts, be the basis for an immediate termination of the Service Contract in the sole discretion of the City. In the event of a breach of Service Contract for non-compliance with this Chapter, the City may also elect to preclude future City contracts with the non-complying Service Contractor.

B. PAYROLL AND OTHER RECORDKEEPING REQUIREMENTS. City Service Contractors shall maintain adequate payroll, tax, time sheets, personnel, and work records sufficient to allow the City to verify the Contractor's compliance with the requirements of this Chapter. Such records shall be maintained for a period of two (2) years after the completion of the City's contract and shall be made available for review by the City upon the City's request.

C. AUDIT OF PAYROLL AND OTHER RECORDS. The City shall have the right of access to the employee time and work records required by this Section for the purposes of conducting an audit of such records to determine compliance with the requirements of this Chapter during the time the Service Contract is in effect and for a period of two (2) years after the completion of any City Service Contract.

D. PERIODIC CERTIFICATION OF COMPLIANCE. The standard City Service Contract provisions shall also require the Service Contractor to periodically provide an appropriate written certification to the City Finance Department certifying the Contractor's compliance with the terms of this Chapter in a form deemed appropriate by the City Finance Director and at those regular times deemed appropriate by the Finance Director. Such certification may include copies of the Employee time and work records as the City deems appropriate and necessary to verify the Contractor's full compliance with the terms of this Chapter.

E. EMPLOYEE PRIVATE RIGHT OF ACTION. Nothing in this Chapter shall be construed to limit an Employee's right to initiate legal action for a violation of his or her rights under this Chapter. An Employee may bring an action in a court of appropriate jurisdiction of this State for damages caused by a Service Contractor's violation of the requirements of this Chapter. A final court judgment in favor of an Employee establishing that a Service Contractor has violated the requirements of this Chapter shall be deemed a conclusive determination that the Contractor has violated this Chapter and shall allow the City, at the City's discretion, to terminate a Service Contract for breach upon not less than five (5) days written notice to the Contractor. (Ord. 5384, 2006.)

9.128.050 Effective Date and Implementation.

The obligations imposed by this Chapter shall take effect as of the effective date of the ordinance codifying this Chapter and shall apply to those City Service Contracts approved (or substantively amended) by the City on or after that date. (Ord. 5384, 2006.)