

New Ordinances Impacting City Contractors/Recipients of City Financial Aid

Recently adopted ordinances will impose additional requirements on some of our contractors and those who receive financial aid from the City. This document provides an overview of those new ordinances and their requirements, as well as guidance on the implementation of these new ordinances.

Chapter 17-1300: The Philadelphia 21st Century Minimum Wage & Benefits Standard

Chapter 17-1300 of the Philadelphia Code, the Philadelphia 21st Century Minimum Wage and Benefits Standard (“minimum wage ordinance”), was recently amended on October 26, 2011 to add a provision requiring employers subject to Chapter 17-1300 to provide sick leave to their employees (“sick pay ordinance”). Chapter 17-1300 of the Philadelphia Code will be collectively referred to herein as Chapter 17-1300. In addition to the new amendment to Chapter 17-1300, also discussed below are earlier requirements of 17-1300 regarding minimum wage and minimum health benefit levels currently imposed on City contractors.

Chapter 17-1900: The Equal Benefits Ordinance

Chapter 17-1900 of the Philadelphia Code (“equal benefits ordinance”) was also recently enacted and would require that certain service contracts with the City include a requirement that the contractor extend the same employment benefits the contractor extends to spouses of its employees to life partners of its employees.

Effective Date/Implementation

1. The minimum wage ordinance was incorporated into the City’s competitively-bid service contracts pursuant to its passing in 2005 and was recently incorporated into our non-competitively bid service contracts in May 2011.¹
2. The sick pay ordinance and the equal benefits ordinance will take effect on July 1, 2012.
3. All contracts whose terms begin on or after July 1, 2012, must contain revised language that will require any contractor meeting the definition of an employer under either ordinance to comply with the provisions contained in one or both applicable ordinances.
4. Contracts that are already in place whose terms extend past July 1, 2012 will not be impacted. However, these new provisions may appear in contract amendments effective on or after July 1, 2012. A revision to the General Provisions and Terms and Conditions, which will include these new provisions, is expected to be completed in the spring.

¹ Prior to the Charter amendments of November 2010, the ordinance did not effectively impose the minimum wage requirements on non-bid contracts.

Overview of Chapter 17-1300

Important Definitions

Employers: There are six categories of Employers to which the requirements of the Chapter apply. They include:

1. The City, its agencies, departments, offices;
2. For-profit Service contractors who have City contracts for \$10,000 or more in a 12-month period, and annual gross receipts of more than \$1M;
3. Non-profit Service contractors who have City contracts over \$100,000 in total in a 12-month period;
4. Recipients of City leases, concessions, or franchises, which employ more than 25 employees;
5. City financial aid recipients (as defined in § 17-1302(2)), for a period of five (5) years following the receipt of aid; and,
6. Public agencies that receive contracts for \$10,000 or more from the City in a 12-month period.

Additionally, the employer must have more than five (5) employees. The requirements also do not apply to subcontractors.²

Covered Employees: The minimum wage requirements of the Chapter only extend to certain covered Employees employed by the aforementioned Employers. They include:

1. Any person who performs work for the covered Employers arising directly from a service contract, financial aid receipt, or City lease, concession, or franchise, and is:
 - a. Employed on a full-time, part-time, temporary or seasonal basis, or
 - b. A temporary worker, contingent worker, or person made available to work through a temporary, staffing or employment agency.

The minimum benefits and sick pay requirements apply to a narrower class of covered Employees: full-time, non-temporary, non-seasonal Employees only.

A covered Employee is not:

1. An employee on a construction project covered by federal, state or local prevailing wage requirements
2. A student intern
3. A summer youth employee

² Charter Sec. 2-309(5) permits Council to impose minimum wage and benefit requirements only as to “those who contract with the City.”

4. A person participating in a bona fide training program (cannot exceed 60 days in duration), which will allow them to advance to permanent employment

Service Contracts: Service contracts include all non-competitively bid contracts and some competitively bid service contracts.

Chapter 17-1300 Requirements

Employers subject to the Chapter must provide covered Employees with the following:

1. 150% of the federal minimum wage. The federal minimum wage is \$7.25 thus the minimum wage must be \$10.88 an hour for any covered Employee.
2. Minimum Health Benefits (full-time, permanent employees only)
3. Sick Pay Benefits (full-time, permanent employees only)

The Minimum Health Benefits requirements are as follows:

1. If employer provides health benefits to any of its employees, they must provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits provided any other full-time employee.

The Sick Pay Benefits requirements also apply only to full-time, non-temporary, non-seasonal employees, and are as follows:

1. For Employers with 12 or more employees, covered Employees have the right to accrue one hour of paid sick time for every 40 hours worked in Philadelphia and they must be allowed to accrue up to 56 hours of paid sick time in a calendar year (or more at the Employer's option).
2. If the Employer employs more than 5 but less than 11 employees, they only need to provide covered Employees with at least 32 hours paid sick time per year.
3. Covered Employees will begin to accrue sick time at the start of employment and can use it as accrued beginning after the 90th day of employment.
4. Covered Employees are allowed to use accrued paid sick time for their own mental or physical illness, injury, etc. or for preventative care.
5. Covered Employees are allowed to use their accrued sick time to take care of a family member. A family member is defined by the Employer's own personnel policies.
6. Covered Employees must provide a good faith effort to give their Employer prior notice of taking sick time and provide reasonable documentation of the sick time when used for two (2) consecutive days. Again, what is required as good faith effort to provide notice and documentation to the Employer will be defined by the Employer's own personnel policies.
7. Covered Employees may use sick time in hourly increments; however, the Employer may follow its own personnel policies when determining sick time increments.

8. Employer must provide notice and posting of the covered Employees' rights under the Chapter.
9. If the Employer has a paid leave policy, which makes available an amount of "paid leave" per year that includes vacation days, personal days, sick days, etc., it will meet the requirements of the sick pay ordinance as long as the minimum number of days required is still provided.

Exemptions/Waivers to Chapter 17-1300

An exemption to Chapter 17-1300 is available if the requirements would be prohibited under state or federal law.

Waivers from the requirements of Chapter 17-1300 are also available for the following reasons:

1. The Employer can demonstrate that implementing the requirements would pose an economic hardship and the waiver will further the interests of the City in creating training positions that enable employees to advance to permanent jobs paying the wage standards within Chapter 17-1300.
2. It is in the best interests of the City to waive the requirements of Chapter 17-1300.

Overview of Chapter 17-1900

Important Definitions

Employment Benefits: Any employee benefit, including, but not limited to, health insurance benefits (health, vision, and dental), bereavement leave, moving expenses, memberships and membership discounts, and travel benefits.

Covered Employees: The requirements apply to employees working on the service contract who either reside in the City or for non-residents, employees who are subject to City wage tax.

Life Partner: A member of a life partnership, as defined by Section 9-1102(1)(r)

Service Contracts: Service contracts include all non-competitively bid contracts and some competitively bid service contracts.

Chapter 17-1900 Requirements

The equal benefits ordinance applies to:

1. Covered employees on Service contracts for \$250,000 or more.

The equal benefits ordinance does not apply to:

1. Service contracts with governmental agencies.
2. Contractors who do not provide Employment Benefits to spouses of married employees.
3. Subcontractors

The equal benefits ordinance requires:

1. For covered Employees, the contractor must extend the same Employment Benefits the contractor extends to spouses of its employees to life partners of its employees.
2. If the contractor's existing benefits agreement does not permit the extension of Employment Benefits to Life Partners at the time the contractor enters into their contract with the City, they must arrange for the extension of these benefits as soon as practicable but in no more than one year after the date of execution of the contract.
3. A bidder or proposer subject to these requirements must include a certification in their bid or proposal that they will comply with Chapter 17-1900 if awarded the contract.
4. The contractor must provide notice to covered Employees of the availability of these Employment Benefits to their life partners.

Exemptions/Waivers to Chapter 17-1900

Waivers to the requirements of Chapter 17-1900 are available for the following reasons:

1. If the provisions of Chapter 17-1900 would result in the loss of federal, state, or similar grant funds or violate federal or state law.
2. If the provisions of Chapter 17-1900 would interfere with a collective bargaining agreement.
3. If the contractor is operated, supervised, or controlled by a bona fide religious institution or organization for charitable purposes and compliance would conflict with the contractor's religious beliefs.
4. If waiving the requirements is in the best interests of the City.

Waiver Process: Chapters 17-1300 & 17-1900

If a contractor wishes to request a waiver to either Chapter 17-1300 or Chapter 17-1900, they must submit the waiver request to the contracting department.

Please use the following instructions to apply for waivers. You must request a waiver for **each** new contract, contract renewal or amendment, or any other agreement.

1. The contractor must provide a memo on letterhead detailing the requirements they wish to waive along with the waiver rationale (the waiver rationale must comport with the waivers available in either Chapter, as described in this memo, along with documentation to support the waiver request). For Chapter 17-1300 specifically, they must submit as supporting documentation a summary of the budget for the proposed work to be performed under the contract including detailed wages and benefit information to be paid all employees working under the City contract, detail on the wages and benefits paid to the five highest paid individuals employed by the contractor, and demonstration that the waiver will further the interests of the City in creating training (or pipeline) positions that will enable employees to advance into future permanent positions paying the new wage standard or better.
2. This waiver request will be reviewed and either approved or rejected by the City. The contractor will be notified once a determination has been made and the waiver will be incorporated into the final contract.