CHAPTER 17-1300. PHILADELPHIA 21ST CENTURY MINIMUM WAGE AND BENEFITS STANDARD 113

This Chapter shall be known as the "Philadelphia 21st Century Minimum Wage Standard". The purpose of the Chapter is to assure that as many employees as possible within the City of Philadelphia earn an hourly wage that enables them to live with more dignity and increased economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should also be invested in a better community economic standard. The City Council of Philadelphia finds that the use of City funds to provide better wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs. The new minimum wage standard is based on existing local and state job creation tax credit laws.

§ 17-1302. Definitions.

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section:

- (1) "City." The City of Philadelphia and all City agencies.
- (2) "City financial aid recipients." All persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, tax incentives, in-kind services, waivers of City fees, or real property in the amount of more than \$100,000 in any twelve (12) month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions. A person or entity who (a) leases property or equipment from a City financial aid recipient; (b) employs more than twenty-five (25) employees; (c) in the case of a not-for-profit entity, leases the property or equipment for consideration in excess of \$100,000 a year; and (d) in the case of a for-profit entity, has annual gross receipts in excess of \$1,000,000 a year, shall also be considered a "City financial aid recipient" for the purposes of this Chapter if such property or equipment was acquired (in whole or in part) with the City's assistance or was otherwise the subject of the City's assistance and the person or entity receives an intended material benefit from the financial assistance, and such person or entity shall be subject to the provisions of this Chapter for the same compliance period as the City financial aid recipient from which they are leasing the property or equipment. 114
 - (3) "Service Contractor." Any person or entity that enters into a Service Contract as hereinafter defined.
- (4) "Employee." ¹¹⁵ Any person who performs work for a covered Employer arising directly out of a Service Contract, City financial aid, the grant of a City lease, concession or franchise, or a funding agreement with a public agency, on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. However, Employee shall not mean any person:
- (a) Employed on a construction project that is covered by federal, state or local prevailing wage requirements;
 - (b) Employed during summer months in a program to create summer jobs for students or teenagers;
- (c) Engaged in a bona fide training program, not to exceed 60 days in duration, under which the person will advance into permanent employment; or
 - (d) Engaged or participating in a bona fide student internship program.
 - (5) "Employer." Those persons with more than five (5) employees, except that no person shall be deemed an

Employer until they receive a new contract, lease, concession, franchise, or financial aid from the City. For these purposes the term "new" includes any arrangement entered into after this Chapter becomes effective, or any amendment, extension or renewal of a preexisting arrangement.

- (6) "Non-profit." A non-profit organization described in Section 501(c) of the Internal Revenue Code of 1954, as amended, which is exempt from taxation under Section 501(c) of that Code.
- (7) "Office of Labor Standards." Such office as shall be designated by the Mayor to administer the provisions of this Chapter.
- (8) "Person." Any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.
- (9) "Service contract." A contract given to an employer by the City for the furnishing of services to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. A subcontract shall be considered a "Service Contract" if it assists in performance of a Service Contract or accepts or transfers any right or responsibility set forth in a Service Contract as defined in this Chapter.

§ 17-1303. Employers Subject to the Requirements of this Chapter. 116

The employers described below shall comply with the minimum compensation standards established by this Chapter.

- (1) The City of Philadelphia, including all its agencies, departments and offices.
- (2) For-profit Service Contractors, which receive or are subcontractors at any tier on contract(s) for \$10,000 or more from the City in a twelve-month period, with annual gross receipts of more than \$1,000,000.
- (3) Non-profit Service Contractors which receive or are subcontractors at any tier on contract(s) from the City of more than \$100,000 in a twelve-month period.
 - (4) Recipients of City leases, concessions, or franchises, or subcontractors or subrecipients thereof at any tier.
- (5) City financial aid recipients. Compliance shall be required for a period of five (5) years following receipt of aid.
 - (6) Public agencies which receive contract(s) for \$10,000 or more from the City in a twelve-month period.

The Office of Labor Standards may grant a partial or total waiver of these requirements, pursuant to the following:

- (1) Any Employer which contends that it is unable to pay all or part of the new wage standard must provide a detailed explanation in writing to the City.
- (2) The explanation must set forth the reasons for an Employer's inability to comply with the provisions of this Chapter, including a complete cost accounting for the proposed work to be performed with any City funding or assistance that gives rise to coverage under this Chapter, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the employer.
- (3) The employer must also demonstrate that the waiver will further the interests of the City in creating training positions which will enable employees to advance into permanent jobs paying the new wage standard or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.
- (4) The City may grant a waiver only upon a finding and determination that the employer has demonstrated

economic hardship and that waiver will further the interests of the City in providing training positions which will enable employees to advance into permanent jobs paying the new wage standard or better.

- (5) However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.
- (6) Waivers from the Chapter are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver.
- (7) If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.
 - (8) If the City determines that a waiver is justified, the following procedure shall apply: 117
- (a) The City may grant the waiver. Within five days of doing so, the City shall submit to the Living Wage and Benefits Review Committee established pursuant to § 17-1311 a copy of the waiver and an explanation of the grounds for issuing it.
- (b) At any time after a waiver has been granted, the Living Wage and Benefits Review Committee or Council, by resolution adopted following a public hearing at which the employer receives an opportunity to appear and testify, may determine that the grounds for continuing the waiver do not exist. If the Committee or Council so determines, the waiver shall expire on the expiration date specified in the resolution. A copy of the adopted resolution shall be forwarded to the Finance Director, or such other officer or agency as the Mayor shall designate, who shall notify the employer by certified mail that the waiver shall terminate on the specified date.
- (9) Notwithstanding any other provision of this Section to the contrary, but subject to subsection (8), the City reserves the right to waive the requirements of this Chapter upon a finding and determination that a waiver is in the best interests of the City. 118
- (10) All of the provisions of this Chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement. 119

§ 17-1305. Compensation Required to be Paid to Employees. 120

{ Recent Amendments }

Except as otherwise provided in this Chapter, an Employer subject to this Chapter shall provide its covered Employees the following minimum compensation:

- (1) Minimum Wage Standard. 121 The Employer shall pay each Employee an hourly wage, excluding benefits, equal to at least the higher of:
 - (a) 150% of the federal minimum wage or
- (b) \$12.00 multiplied by the CPI Multiplier. The CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after January 1 of each year by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of January 1, 2015.
- (2) Minimum Benefits Standard. To the extent the employer provides health benefits to any of its employees, the Employer shall provide each full-time, non-temporary, non-seasonal covered Employee health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer. The Employer shall also provide to each full-time, non-temporary, non-seasonal covered Employee at least the number of earned sick leave days that the Employer would have been required to provide to such Employees if the provisions of Bill No. 080474-AA, as passed by Council on June 16, 2011, had been enacted into law.122

(3) Additional compensation permissible. Nothing in this Chapter shall be construed to limit an employer's discretion to provide greater wages or benefits to its employees.

§ 17-1306. Required Contract Provisions. 123

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid (collectively "contract" or "agreement") with an employer described in this Chapter or amendment thereto shall contain provisions requiring the employer to comply with the requirements of this Chapter as they exist on the date when the employer entered into its agreement with the City or when such agreement is amended. Such agreement provisions shall require the employer to promptly provide to the City documents and information verifying its compliance with the requirements of this Chapter, and provide for sanctions for non-compliance. Such agreement provisions shall also require the employer to notify each of its affected employees with regard to the wages that are required to be paid pursuant to this Chapter. Such agreement provisions shall also require the employer to pass along the requirements of this Chapter to subcontractors and subrecipients at any tier.

§ 17-1307. Exemptions.

(1) An employee for whom application of the requirements of this Chapter is prohibited by state or federal law.

■§ 17-1308. Retaliation and Discrimination Prohibited.

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Chapter.

Representation Notes 17-1309. Private Right of Action.

- (1) A person aggrieved by a violation of this Chapter may bring an action against an employer and obtain the following remedies:
- (a) Back pay for each day during which the employer failed to pay the compensation required by this Chapter.
- (b) Reinstatement, compensatory damages and punitive damages, to the extent such punitive damages are permitted by law.
 - (c) Reasonable attorney's fees and costs.
- (2) Notwithstanding any provision of this Chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this Chapter.
- (3) No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.
- (4) Nothing in this Chapter shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this Chapter.

§ 17-1310. Responsible Bidding and Use of City Funds.

Prior to commencement of the contract's term or execution by the City, each Contractor covered by the bill's requirements will certify to the satisfaction of the City that its employees are paid the minimum wage standard as provided by the Chapter. As part of any bid, application or proposal for any agreement or contract, or other funding arrangement with the City covered by this Chapter, the submitter shall include an acknowledgment, in a

form acceptable to the City, of the terms of this Chapter and intent to comply therewith.

§ 17-1311. Living Wage and Benefits Review Committee. 124

- (1) Establishment. The Living Wage and Benefits Review Committee is hereby established as an agency of Council. The Committee's purpose shall be to review the implementation, effectiveness and enforcement of this Chapter, to terminate waivers as provided in § 17-1304, and to make recommendations to Council regarding the adoption of resolutions calling for debarment of certain contractors and recipients of City financial assistance under § 17-1312.125
- (2) Members. The Committee shall be composed of seven members, at least four of whom shall be representatives of the labor and business communities and one of whom shall be a representative of the Office of Labor Standards. No more than two (2) members shall be members of the business community. No members of the Committee shall be employed by an employer subject to the provisions of this Chapter, except that the member representing the Office of Labor Standards may be employed by the City. 126
- (3) *Meetings*. The Committee shall meet at least quarterly. All meetings shall be open to the public. At each meeting, an opportunity shall be provided for public testimony on matters relating to <u>Chapter 17-1300</u> of The Philadelphia Code.

№ § 17-1312. Enforcement. ¹²⁷

- (1) An employer subject to this Chapter who fails to comply with its provisions may, after notice and hearing before the Finance Director or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts for up to three (3) years.
- (2) Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to this Chapter has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Finance Director, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of this Chapter and whether debarment, as provided by § 17-1312(1), should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in this Chapter. The debarment procedure set forth in this subsection (2) shall be in addition to any procedure for debarment established pursuant to § 17-1312(1).

Notes 113 Added, Bill No. 050234 (approved May 26, 2005); caption amended, Bill No. 080021 (approved April 28, 2008), effective July 1, 2009. Amended, Bill No. 100756 (approved January 5, 2011), effective July 1, 2011. 114 Subsection renumbered by Code editor. 115 Amended, Bill No. 121040 (approved March 12, 2013), effective July 1, 2013; amended, Bill No. 140488 (approved 116 July 30, 2014). Added, Bill No. 130744-A (approved March 4, 2014). Section 2 of Bill No. 130744-A provides: "This Ordinance shall 117 take effect upon approval by the voters of the amendment to the Philadelphia Home Rule Charter proposed in Resolution No. 130544." The voters approved that amendment in an election held May 20, 2014. Renumbered and amended, Bill No. 130744-A (approved March 4, 2014). See note 117 for effective date provision. 118

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119	Renumbered, Bill No. 130744-A (approved March 4, 2014). See note 117 for effective date provision.
120	Amended, Bill No. 080021 (approved April 28, 2008), effective July 1, 2009.
Recent Amendments	This section has been amended by Bill No. 160278 (approved June 28, 2016). Click here to view this bill. This section has also been amended by Bill No. 160364 (approved June 28, 2016). Click here to view this bill.
121	Amended and subsection (1)(b) added, Bill No. 140488 (approved July 30, 2014), effective January 1, 2015.
122	Amended, Bill No. 110557 (became law October 27, 2011), effective July 1, 2012. For a copy of Bill No. 080474-AA, see the appendix at the end of this Title 17.
123	Amended, Bill No. 140488 (approved July 30, 2014).
124	Former Section deleted and new Section added, Bill No. 110558 (approved October 26, 2011).
125	Amended, Bill No. 130744-A (approved March 4, 2014). See note 117 for effective date provision.
126	Amended, Bill No. 140100 (approved March 21, 2014).
127	Added, Bill No. 090579 (approved October 28, 2009).