

Item 55

(O-2016-61) 2/2/16

ORDINANCE NUMBER O- 20607 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 02 2016

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 22.4205, 22.4210, 22.4215, 22.4220, AND 22.4225 ALL RELATED TO THE CITY OF SAN DIEGO'S LIVING WAGE ORDINANCE.

WHEREAS, the City's Living Wage Ordinance (LWO) has been in effect since 2005;
and

WHEREAS, the purpose of the LWO is to ensure that businesses with whom the City contracts provide their employees with a living wage, health benefits or payments toward the costs of health insurance, and compensated leave, thus creating jobs that help keep employees and their families out of poverty; and

WHEREAS, service workers in the medical field are currently exempt from the LWO;
and

WHEREAS, the LWO does not currently require covered employees to be paid the cash value of compensated leave for service contracts that last one calendar day or less; and

WHEREAS, the state has enacted the Healthy Workplaces, Healthy Families Act of 2014 requiring three days of paid sick leave for eligible employees (Assem. Bill 1522 (2013-2014 Reg. Sess.)); and

WHEREAS, the City wishes to amend the LWO to increase clarity, ensure consistency with state law, ensure payment of compensated leave to covered employees, and broaden coverage of the LWO to include service workers in the medical field; and

WHEREAS, these revisions are not intended to apply retroactively to existing contracts;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 42 of the San Diego Municipal Code is amended by amending sections 22.4205, 22.4210, 22.4215, 22.4220, and 22.4225, to read as follows:

§22.4205 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

Affordable Care Act through City Manager [No change in text.]

Compensated leave means any paid leave for illness, vacation, or personal need provided by a *covered employer* to a *covered employee*, but does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

Covered employee through Service contractor [No change in text.]

Services means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this Division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) through (o) [No change in text.]
- (p) Warehouse workers;
- (q) [No change in text.]
- (r) Right-of-way maintenance;
- (s) Water and wastewater maintenance; and

- (t) Service workers in the medical field, including emergency medical technicians and paramedics.

Unfair immigration-related practice through Willful violation [No change in text.]

§22.4210 Applicability of Living Wage Ordinance

- (a) This Division shall apply to:
 - (1) any *service contract*, including any applicable subcontract, that is entered into, awarded, amended, renewed, or extended.

Compliance with this Division is required during the term of the *service contract*.
 - (2) through (4) [No change in text.]
- (b) *City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this Division.
- (c) [No change in text.]

§22.4215 Exemptions

- (a) The following contracts are exempt from the requirements of this Division:
 - (1) through (6) [No change in text.]
 - (7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services. The exemption for professional medical contracts shall not extend to *service contracts* for

emergency medical personnel, including emergency medical technicians and paramedics;

- (8) [No change in text.]
- (b) *City facility agreements* are not exempt from the requirements of this Division.
- (c) The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this Division:
 - (1) [No change in text.]
 - (2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid *covered employee*.
- (d) [No change in text.]

§22.4220 Payment of Living Wage and Provision of Benefits

- (a) through (b) [No change in text.]
- (c) *Covered employers* must provide to each *covered employee* a minimum of eighty hours per year of *compensated leave*. *Compensated leave* must vest as accrued, in accordance with applicable state law and *covered employer* policies. Part-time employees must accrue *compensated leave* at a rate proportional to full-time employees. A *covered employee*, working under a *service contract* to provide *services* for the *City* of one day or less, must be

paid additional wages in an amount equal to the proportional rate of *compensated leave*, in lieu of receipt of *compensated leave*.

- (d) *Covered employees* must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.
- (e) *Covered employers* must also permit *covered employees* to take a minimum of eighty hours of uncompensated leave per year to be used for the illness of the *covered employee* or a member of his or her immediate family, when the *covered employee* has exhausted all accrued *compensated leave*.
- (f) This section does not mandate the accrual from year to year of uncompensated leave.
- (g) The *City* will provide *covered employers* with credit toward the total amount of *compensated leave* required under this Division for the paid sick leave they must provide under the California Healthy Workplaces, Healthy Families Act of 2014.
- (h) [No change in text.]

§22.4225 Reporting and Notification Requirements

- (a) [No change in text.]
- (b) Each *covered employer* must notify *covered employees* at the time of hire and must annually distribute a notice with the first paycheck to occur after July 1 to its *covered employees* of the requirements of this Division, the

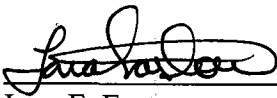
possible availability of health insurance coverage under the *Affordable Care Act*, and the possible availability of the Earned Income Tax Credit.

(c) through (e) [No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Lara E. Easton
Deputy City Attorney

LEE:cfq:cw
12/16/15
Or.Dept: P&C
CC No.: N/A
Doc. No.: 1046783_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 23 2016.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3/2/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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§22.4205 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

Affordable Care Act through City Manager [No change in text.]

Compensated leave means any paid sick leave for illness, vacation leave, or personal leave need provided by a *covered employer* to a *covered employee*;

~~*Compensated leave*~~ but does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

Covered employee through Service contractor [No change in text.]

Services means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this Division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

(a) through (o) [No change in text.]

(p) Warehouse workers;

- (q) [No change in text.]
- (r) Right-of-way maintenance; ~~and~~
- (s) Water and wastewater maintenance; and
- (t) Service workers in the medical field, including emergency medical technicians and paramedics.

Unfair immigration-related practice through Willful violation [No change in text.]

§22.4210 Applicability of Living Wage Ordinance

- (a) This ~~d~~Division shall apply to:
 - (1) any *service contract*, including any applicable subcontract, ~~except for service contracts with a combined value of payments of \$25,000 or less that are~~ is entered into, awarded, amended, renewed, or extended ~~before April 1, 2014~~. Compliance with this Division is required during the term of the *service contract*.
 - (2) through (4) [No change in text.]
- (b) ~~Service contracts, financial assistance agreements, and City facility agreements~~ shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this Division.
- (c) [No change in text.]

§22.4215 Exemptions.

- (a) The following contracts are exempt from the requirements of this Division:
 - (1) through (6) [No change in text.]

(7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services. The exemption for professional medical contracts shall not extend to service contracts for emergency medical personnel, including emergency medical technicians and paramedics;

(8) [No change in text.]

(b) ~~Notwithstanding section 22.4215(a)(1)-(8),~~ *City facility agreements* are not exempt from the requirements of this Division.

(c) The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this Division:

(1) [No change in text.]

(2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid ~~full-time employee~~ *covered employee*.

(d) [No change in text.]

§22.4220 Payment of Living Wage and Provision of Benefits

(a) through (b) [No change in text.]

(c) *Covered employers* must provide to each *covered employee* a minimum of ~~ten days~~ *eighty hours* per year of *compensated leave*. *Compensated leave*

must vest as accrued, in accordance with applicable state law and covered employer policies. Part-time employees must accrue *compensated leave* at a rate proportional to full-time employees. ~~Covered employees must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.~~ A covered employee, working under a service contract to provide services for the City of one day or less, must be paid additional wages in an amount equal to the proportional rate of compensated leave, in lieu of receipt of compensated leave.

(d) Covered employees must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.

~~(d)~~(e) Covered employers must also permit covered employees to take a minimum of ten additional days eighty hours of uncompensated leave per year to be used for sick leave for the illness of the covered employee or a member of his or her immediate family, where when the covered employee has exhausted all accrued compensated leave. This section does not mandate the accrual from year to year of uncompensated days off.

(f) This section does not mandate the accrual from year to year of uncompensated leave.

(g) The City will provide covered employers with credit toward the total amount of compensated leave required under this Division for the paid sick leave they must provide under the California Healthy Workplaces, Healthy Families Act of 2014.

~~(e)~~(h) [No change in text.]

§22.4225 Reporting and Notification Requirements

(a) [No change in text.]

(b) Each *covered employer* must notify covered employees at the time of hire and must annually distribute a notice with the first paycheck to occur after July 1 to its *covered employees* of the requirements of this Division, the possible availability of health insurance coverage under the *Affordable Care Act*, and the possible availability of the Earned Income Tax Credit.

(c) through (e) [No change in text.]

LEE:cfq:cw
12/16/15
Or.Dept: P&C
CC No.: N/A
Doc. No.: 1046784_3

Passed by the Council of The City of San Diego on FEB 23 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 02 2016

AUTHENTICATED BY: KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Hernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on FEB 02 2016, and on MAR 02 2016.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Hernandez, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20607