

Ordinances Impacting City Contractors/Recipients of City Financial Aid

Several City ordinances impose additional requirements on City's contractors and those who receive financial aid from the City with respect to employee wages and benefits. This document provides an overview of these ordinances and their requirements, as well as guidance on the implementation of these ordinances. Interested parties are advised to consult the actual ordinances for further detail beyond the scope of this summary.

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/Benefits Ordinance"), was 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

Adopted in December, 2011, Chapter 17-1900 of the Philadelphia Code ("Equal Benefits Ordinance") requires 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 who are City residents or who pay City wage tax.

Effective Date/Implementation

1. The Minimum Wage/Benefits Ordinance was applied to the City's competitively-bid service contracts (generally service contracts solicited through the lowest responsible bid procedures of the City's Procurement Department) upon its enactment in 2005, and as of May 2011, was also applied to the City's non-competitively bid service contracts (generally professional service contracts solicited on the City's eContract Philly web site).
2. The Sick Pay Ordinance and the Equal Benefits Ordinance took effect on July 1, 2012.
3. All City contracts whose terms began on or after July 1, 2012, contain language that requires any contractor meeting the definition of an Employer under either ordinance to comply with the provisions contained in one or both ordinances, as applicable.
4. Existing contracts whose terms extend past July 1, 2012 are not impacted. However, the requirements of these ordinances will apply to amendments to these contracts effective on or after July 1, 2012. For new contracts executed after July 1, 2012, the City's General Provisions containing legal terms and conditions applicable to the contract have been revised to incorporate the requirements of these ordinances.

Overview of Chapter 17-1300, Minimum Wage/Benefits Ordinance

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 a 12-month period;
4. Recipients of City leases, concessions, or franchises;
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.

The ordinance does not apply to employers with five (5) or fewer employees. The requirements also do not apply to subcontractors.

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, the receipt of financial aid, or a 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
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/hour; thus the minimum wage must be \$10.88/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 requirement is as follows:

1. If the Employer provides health benefits to any of its employees, it 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 (or 7 days based on an 8-hour day) 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, it only needs to provide covered Employees with at least 32 hours (or 4 days based on an 8-hour day) 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 or more. 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. The 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.

See page 7 for waiver process.

Overview of Chapter 17-1900, Equal Benefits Ordinance

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 ordinance applies to employees of the contractor who either reside in the City, or for non-residents, employees who are subject to the City's 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. 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 its contract with the City, it must arrange for the extension of these benefits as soon as practicable, but in no case 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.

See page 7 for Waiver process.

Waiver Process: Chapters 17-1300 & 17-1900

If a contractor wishes to request a waiver to either Chapter 17-1300 or Chapter 17-1900, it 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 it wishes 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, the contractor must submit as supporting documentation a summary of the budget for the proposed work to be performed under the contract, including detailed wage and benefit information to be paid or provided to 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. The 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, if granted, the waiver will be incorporated into the final contract.