

Fair Wage Office – 2012 Annual Report

Date:	September 30, 2013
To:	Government Management Committee
From:	Manager, Fair Wage Office
Wards:	All
Reference Number:	TBA

SUMMARY

This report provides an overview of the activities of the Fair Wage office for 2012

RECOMMENDATIONS

The Manager, Fair Wage Office recommends that:

1. Government Management Committee receives this report for information.

Financial Impact

There are no financial implications from this report.

EQUITY IMPACT STATEMENT

The implementation of the Fair Wage Policy advances the City's commitment towards access, equity, and workers and human rights by ensuring that workers on City contracts are paid a "fair wage" and are not subject to harassment or discrimination. Through the implementation of this policy, workers become aware of their rights and this is particularly important to newly arrived immigrants and other vulnerable workers. The Fair Wage Office will increase awareness in the immigrant community by providing educational material in various languages about the City's Fair Wage Policy and complaint process. Through these efforts, workers and employers will be better informed of their rights and responsibilities.

DECISION HISTORY

At its meeting on June 24, 25 and 26, 2003, City Council approved Clause No. 2 contained in report No. 5 of the Administration Committee, clarifying the role of the Fair Wage Office and its responsibility for ensuring compliance with the Fair Wage Policy. Municipal Code, Fair Wage Policy Chapter 67, Schedule A & B requires the Manager, Fair Wage Office to report annually to the Government Management Committee concerning the Fair Wage Policy administration and application including enforcement activities.

ISSUE BACKGROUND

The Fair Wage Policy is designed to ensure that contractors awarded contracts with the City of Toronto pay their workers “fair wages” for work performed and to ensure that workers are treated fairly in the work place by setting standards that employers must meet. The Fair Wage Office is responsible for ensuring that a fair, open and transparent process is followed in the overall application and operation of the Fair Wage Policy and Labour Trade Contractual Obligations in the construction industry.

The intent of the Fair Wage Policy can be summarized as follows:

- (1) To produce stable labour relations with minimal disruption.
- (2) To compromise between the wage differentials of organized and unorganized labour.
- (3) To create a level playing field in competition for City Work.
- (4) To protect the public and workers from exploitation by unscrupulous contractors.
- (5) To enhance the reputation of the City for ethical and fair business dealings.

The Fair Wage Office investigates complaints and takes enforcement action when it is determined that contractors fail to pay their workers the prescribed hourly wage rate, vacation and holiday pay and any applicable amount for fringe benefits shown in the current Fair Wage Schedules.

The Fair Wage Office provides wage protection for workers engaged on City contracts. The competition for these contracts is often fierce and contractors and sub-contractors might be enticed to cut contract cost simply by cutting employee wages. In this environment, it is important to ensure that workers are fairly treated and compensated without disrupting the orderly function of the City’s procurement process.

Key element of the program involves:

- Verifying contractor(s) or Sub-contractor(s) eligibility;
- Conduct on-site investigations and interviews with labourers & mechanics, trade personnel, company and City officials;
- Comply with posting requirements;
- Review certified weekly/bi-weekly payrolls;
- Ensure compliance with requirements;

- Maintain full documentation of actions;
- Refer disqualification recommendations to standing committee; and
- Submit to Council annual and required reports

COMMENTS

This report outlines the Fair Wage Office activities for 2012 and provides information on Contractor's who had at least one incident of non-compliance during the year, with a focus on the following areas:

- Procurement workload indicators (the number of contracts and firms reviewed);
- The number of established investigations conducted;
- Type of violations found;
- The amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered on behalf of workers; and
- The amount of administration fee penalties transferred to the City Treasurer as a result of the Fair Wage Office efforts.

It should be noted that, investigations from the period of 2004-2012 recovered approximately \$1.7 million in back wages of 1,532 workers who encountered certain contractor or subcontractor practices such as: underpayment of wages and misclassification of workers, underreporting of hours and the number of workers, cash payments, non-payment of wages, unpaid overtime, banked overtime hours, non-payment of benefits, off-the-clock violations and late payments.

2012 Highlights

During the past year, as part of City Councils direction, staff reported to the Public Works and Infrastructure Committee on various aspects of Curb Side Collections, District 2 involving Green For Life Environmental East Corporation (GFL). As part of this direction, the Fair Wage Office examined the company's payroll sheets, pay statements, and time cards in order to ensure compliance with the City's Fair Wage Policy. The specific payroll review and examination procedures were carried out with results sufficient to support an opinion of GFL's compliance.

The Fair Wage Office conducted an extensive investigation of an electrical contractor who managed and supplied materials for the electrical portion of the Toronto Public Library project. The company sub-contracted the labour portion of the electrical work to another electrical firm who employed five electricians and misclassified all of the workers as independent contractors. This arrangement was not a true independent contractor relationship and did not meet Canada Revenue Agency's conditions to support an independent contractor(s) status. The investigation also revealed that the company failed to maintain general payroll records and failed to pay workers wages in accordance with the applicable fair wage schedule.

In addition, the Fair Wage Office dealt with several labour trade issues involving Disco Organic Processing Facility regarding the assignment of trade work jurisdiction by the project management company managing the project, contrary the City's Labour Trade Contractual Obligations in the construction industry.

Table 1 – 2009-2012 Fair Wage Office Activity Limited to City of Toronto Contracts

	2009	2010	2011	2012
Number of Firms Reviewed	2,660	3,126	1750	1608
Number of Firms Approved	2,556	2,881	1701	1442
Number of Tenders/RFQs/RFPs/DPOs/Sole Source Requests	2,537	2,117	1119	1048
Number of Site Visits Conducted	141	319	229	265
Total Investigations Conducted	70	97	64	76
Fair Wage Policy Investigations	45	63	40	37
Labour Trade Contractual Obligations Investigations(LTCO)	25	34	24	39
Value of Violations (Fair Wage Policy & LTCO)	\$345,101.30	\$147, 638.88	\$413,412.48	\$318,802.29
Number of Contractors Cited for First Violation	25	19	12	14
Value of Fair Wage Violations	\$283, 275.41	\$86, 599.24	\$285, 488.51	\$200,889.30
Number of Workers Receiving Back Wages	295	91	82	109
Value (\$) Collected for Fair Wage Policy Administration Fee	\$37, 580.64	\$21,495.73	\$42, 823.28	\$15,730.15
Number of Grievances Investigated (Violations)	25	10	9	14
Value of Grievance Violations	\$61,825.89	\$61, 039.64	\$127, 923.97	\$117,912.99
Exhibition Place – payment received for FWO Service	\$1, 914.64	\$1, 914.64	\$1, 914.64	\$1,914.64

Much of the work undertaken by the Fair Wage Office is investigating contractors compliance and directed at corroborating payroll information. This is achieved through verifying payroll records, wages paid, vacation pay, hours of work, daily logs, cancelled cheques and workers job classification.

In 2012, the Fair Wage Office conducted two hundred and sixty five (265) site visits and seventy six (76) investigations in which thirty seven (37) pertained to the Fair Wage Policy. Of the thirty seven Fair Wage Policy investigations, fifteen firms were cited for their first violation as identified in Appendix A of this report. In the event that any of the firms listed are found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years, the Manager of the Fair Wage Office must report to Council on disqualification from City contracts for a two year period.

Back wages and benefits owed to workers from non-compliant contractors totalled \$200,889.30. These funds were collected and distributed to a total of one hundred and nine workers. Also, the Fair Wage Office collected a total of \$15,730.15 in administration fees made payable to the City Treasurer.

Labour Trade Violations

Compliance with the City's nine collective agreements in the Industrial, Commercial, Institutional construction sector is critical in minimizing the City's liabilities, managing risk and avoiding costly litigation and labour trade grievances against the City. The Fair Wage Office provides support to Employee and Labour Relations staff with respect to grievances filed against the City by a labour trade union for alleged violations of the City's Labour Trade Contractual Obligations in the construction industry and/or the application of the collective agreements.

Where firms have allegedly violated the City's Labour Trade Contractual Obligations in the construction industry, the Fair Wage Office has continued to take an active role in facilitating many of the settlements achieved. The Fair Wage Office holds exploratory and discovery meetings in order to resolve alleged Labour Trade violations with various affected contractors. These discussions may occur before or after a grievance is filed against the City and/or before the grievance is referred to the Ontario Labour Relations Board. The Fair Wage Office, together with Employee & Labour Relations and Legal staff regularly engage in informal or formal dispute resolution aimed at facilitating settlements. This frequently takes the form of addressing the relative strengths and weaknesses of the factual and legal positions of the parties, and giving the parties the opportunity for open and frank discussions.

These efforts have directly resulted in twelve Labour Trade settlements in 2012, as well as faster case processing, thus avoiding costly grievance hearings at the Ontario Labour Relations Board. In 2012, a total value of \$117,912.99 in negotiated grievances filed against the City of Toronto, were resolved. Appendix A of this report identifies the firms involved in Labour trade non-compliance.

Work Plan 2013

Contracting out is emerging as an increasingly common approach to the delivery of the City's municipal services. Under the contracting-out agreement, the City requires that the prevailing fair wage rate be paid to all employees working on its contracts. Fair wage schedules were last updated 2003 and shall be reviewed in 2013 bringing wage rates to current prevailing market wage rates. There will be a greater emphasis on General Contractors and associated Sub-Contracting firms to ensure fair wage compliance throughout the sub-contracting chain.

In addition, several multi-year contracts will be monitored to ensure annual wage increases are passed on to workers meeting the City's contractual requirements.

CONCLUSION

In 2012, the Fair Wage Office conducted two hundred and sixty five (265) site visits, and will continue to make this a priority to enforce and increase the visibility of the Fair Wage Policy. Additionally, the Fair Wage Office will compare the list of non-compliant contractors in the event of any additional violations and if necessary shall report disqualification to Committee and Council. Providing and distributing educational material in various languages, about the City's Fair Wage Policy to workers and contractors will continue to foster greater awareness. The Fair Wage Office will also continue to work co-operatively with internal client groups, operating divisions and external industries to promote, educate and resolve fair wage and labour trade issues to meet policy objectives and related emerging critical issues throughout the year.

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SIGNATURE

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ATTACHMENTS

Appendix A: Fair Wage Office – 2012 Non-Compliant Firms

APPENDIX A

Fair Wage Office –2012 Non-Compliant Firms

Fair Wage Non-Compliant	Labour Trade Non-Compliant
1. A&F DiCarlo Construction Inc.	1. Aecon Group Inc.
2. Belair Sheet Metal Ltd.	2. CIR Construction Company
3. Beta & Associates Inc.	3. Clifford Restoration Group Ltd.
4. CDK Lanscape Ltd.	4. Dael Thermal Group Inc.
5. Dig-It Excavating Inc.	5. Direct Construction Co. Ltd.
6. Ferdom Construction Ltd.	6. E.S Fox Construction Ltd.
7. H2Flow Tanks & Systems Inc.	7. E.T Construction Inc.
8. Ontario Line Clearing & Tree Service Ltd.	8. Eileen Roofing Inc.
9. Pave-Tar Construction Ltd.	9. Joe Pace and Sons Contracting Inc.
10. Pegah Construction Ltd.	10. Main Air Systems Inc.
11. Peltar Paving Ltd.	11. Mopal Construction Ltd.
12. Quorum Electric Ltd.	12. Morosons Construction Ltd.
13. Spectrum Skateparks Ltd.	13. Tanenbaum General Landscape & Design Inc.
14. Walton Paving & Interlocking Ltd.	14. Vitrex Glazing System Inc.

Total number of investigations completed, refer to Fair Wage Office – 2012 Annual Report Table 1 – Fair Wage Office Activity for 2012.