

Fair Wage Office - 2019 Annual Report

Date: November 16, 2020

To: General Government and Licensing Committee

From: Manager, Fair Wage Office

Wards: Ward(s) affected or All

SUMMARY

This report provides an overview of the activities of the Fair Wage Office for 2019.

RECOMMENDATIONS

The Manager, Fair Wage Office recommends that:

1. The General Government and Licensing Committee receive this report for information.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendation in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information

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.

COMMENTS

EQUITY IMPACT STATEMENT

The implementation of the Fair Wage Policy advances the City's commitment to access, equity, and workers' 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. This is particularly important to new 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 about their rights and responsibilities.

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
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 significant and contractors and sub-contractors might be enticed to cut contract costs simply by cutting employee wages. In this competitive environment, it is important to ensure that workers are fairly treated and compensated.

Key elements of the program involve:

- Verifying contractor(s) or sub-contractor(s) eligibility;
- Conducting on-site investigations and interviews with labourers & mechanics, trade workers/personnel, company and City officials;
- Ensuring compliance with posting and policy requirements;

- Conducting reviews of weekly/bi-weekly payroll records;
- Maintaining full documentation of actions;
- Recommending non-complying firms for disqualification to standing committee; and
- Reporting annually to City Council on Fair Wage Office activities.

It should be noted that, investigations from the period of 2004-2019 recovered approximately \$5.4 million in back wages to 4,248 workers. These workers 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.

2019 Highlights:

Table 1 provides an overview of the different types of activity that the Fair Wage Office engaged in and the volume of each activity type for 2015-2019. The dollar value of fair wage violations is also provided.

	2016	2017	2018	2019
Number of Firms Reviewed	2444	2667	2413	2574
Number of Firms Approved	2426	2570	2339	2522
Number of Tenders/RFQs/RFPs/DPOs/Sole Source Requests	1536	1753	1631	1543
Number of Site Visits Conducted	221	247	119	121
Total Investigations Conducted	57	58	34	40
Fair Wage Policy Investigations	43	35	20	25
Labour Trade Contractual Obligations Investigations(LTCO)	14	23	14	15
Value of Violations (Fair Wage Policy and LTCO)	\$1,742,027	\$254,919	\$896,958	\$366,346
Number of Contractors Cited for First	18	6	8	3
Value of Fair Wage Violations	\$1,697,026	\$157,785	\$827,680	\$346,843
Number of Workers Receiving Back Wages	2021	47	117	241
Value (\$) Collected for Fair Wage Policy Administration Fee	\$209,563	\$18,149	\$142,089	\$50,519
Number of Grievances Investigated	5	23	14	12
Value of Violations	\$45,000	\$97,134	\$69,278	\$19,500

Fair Wage Violations

Much of the Fair Wage Office's work 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 worker job classifications.

In 2019, the Fair Wage Office conducted one hundred and twenty-one (121) site visits and forty (40) investigations. Twenty-five (25) investigations pertained to the Fair Wage Policy and the remaining fifteen (15) investigations were regarding the City's Labour Trade Obligations. Of the twenty-five (25) Fair Wage Policy investigations, three (3) firms were cited for their first violation, as identified in Appendix A at the end of this report. If any of the firms listed are found to be non-compliant with the Fair Wage Policy in two separate instances over a period of three years, the Manager of the Fair Wage Office shall report these instances of non-compliance to Council and may recommend the firms be disqualified from City contracts for a two year period.

In 2019, back wages and benefits owed to workers from non-compliant contractors totalled \$346,843.33. These funds were collected and distributed to a total one hundred and sixteen (241) workers. In addition, the Fair Wage Office collected a total of \$50,518.80 in administration fees made payable to the City Treasurer.

Labour Trade Violations

Compliance with the City's construction labour trade agreements, in the Industrial, Commercial, Institutional (ICI) 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 compliance verification to Purchasing and Material Management Division prior to contract award. The Fair Wage Office also supports 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.

Significant efforts are undertaken to review and approve contractors and sub-contractors with appropriate signatory trade affiliation prior to contract award. Critical tasks include assignment of the work to trades with affiliated agreements that have jurisdiction over the work in the ICI sector of the construction industry.

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 settlements. 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 fifteen (15) Labour Trade settlements in 2019, as well as faster case processing, thus avoiding costly grievance hearings at the Ontario Labour Relations Board. In 2019, a total value of \$19,500.00 in negotiated grievances filed against the City of Toronto, were resolved. A list at the end of this report identifies the firms alleged to have been involved in Labour Trade non-compliance.

Major Investigations

Miller Waste Systems

A Fair Wage review of Miller Waste Systems commenced in July 2018 resulting from a worker complaint. The complaint stemmed from a Fair Wage review that was conducted in 2016. The Fair Wage Office re-opened the investigation and expanded the review to capture worker data spanning 6 years.

The review took nearly two years to complete from the time the complaint was received. The review was conducted in phases due to the large amount of workers involved and the length of time included in the scope. The first phase of the review was captured in the Annual Report of 2018 and two remaining phases are captured in this year's report.

Legal Services was engaged and an Implementation Plan was developed to bring an increased level of consistency to the execution of the review. The Implementation Plan detailed the distribution protocol of outstanding wages, administration and record keeping associated with the review and was agreed upon by Miller Waste Systems.

In June 2020, at the conclusion of this review, it had been determined that Miller Waste Systems did not pay its workers the requisite Fair Wage rates as per the contract. Miller Waste Systems owed \$319,058 in wages to approximately 260 workers. The worker wages have since been distributed in accordance with the distribution plan in 2020.

Queensway Excavating & Landscaping Ltd.:

Queensway Excavating & Landscaping Ltd. (Queensway) was found non-compliant with the Fair Wage Policy in 2016 and 2018 and subsequently disqualified from doing business with the City for two years. Upon conclusion of a Judicial Review in Late 2019, Toronto's Fair Wage Office was ordered by the Divisional Court to reconsider its decision to disqualify Queensway for non-compliance with Toronto's Fair Wage Policy.

In 2019-2020, the Fair Wage Office conducted a reconsideration of the 2018 Fair Wage decision with the proper notice and disclosure and provided Queensway with an opportunity to be heard as required by the Court. The reconsideration decision in February 2020 determined that Queensway was non-compliant with the City's Fair Wage Policy in two separate instances over a period of three years inclusive.

The Manager, Fair Wage Office recommended to General Government and Licensing Committee in a report in July 2020 (GL14.15) that City Council not disqualify Queensway as it was determined the time between the May 2018 report (GM27.16) and the report in February 2020 (GL14.15) is equivalent to any disqualification period which might have been imposed for multiple instances of any Fair Wage Policy non-compliance. The report (GL14.15) and its recommendations were adopted by City Council.

The Workforce Scheduling Pilot

In 2018, pursuant to the Poverty Reduction Strategy, Council directed the Executive Director, Human Resources, the Chief Purchasing Officer and the Executive Director, Social Development, Finance and Administration, to pilot-test standards in City contracts and procurement documents related to advance notice of scheduling (EX29.12), hereinafter the "Workforce Scheduling Pilot". In 2019, the Fair Wage Office successfully included the workforce scheduling pilot in (3) City contracts, namely School Crossing Guards, Security Services for Respite Centres and Custodial Services. The monitoring of Vendor's ability to adhere to the pilot's requirements and City Division's ability to hold Vendors accountable commenced in Q3 2019 and is scheduled to continue through 2020 and into 2021.

Provincial Fair Wage

At its meeting on June 24, 2019, The General Government and Licensing Committee (item GL6.29) requested that the 2019 Annual Report to General Government and Licensing Committee include:

- a. information about the Province of Ontario's Fair Wage Policy; and
- b. a comparison of the City of Toronto's Fair Wage Policy with the Province of Ontario's Fair Wage Policy.

Province of Ontario's Fair Wage Policy

The Provincial Fair Wage Policy applies to Ministries and government agencies of the province. Its purpose is to ensure that workers receive fair wage rates and labour conditions on provincial contracts. This policy also protects contractors from unfair competition based on reduced labour costs when bidding on government contracts.

The requirement to pay fair wages was enacted as legislation in 1936 under the Government Contract Hours and Wages Act and only applied to construction. This was then replaced by the Order-in-Council 773/95 enacted April 1, 1995 broadening the application to construction, building maintenance, security and to printing. The associated wage rates were last updated in 1995. Currently the Provincial Fair Wage Policy applies to contracts that are \$100,000 or more in value in the ICI sector, \$160,000 or more in value in the road building sector and to all sewer and watermain

sectors. The Ministry of Labour, Employment Standards Program is responsible for the administration of the Fair Wage Policy. Under the current process, the enforcement takes place with the ministry or agency that lets the contract. The wage rates have not been updated since 1995 and the enforcement of this policy is infrequently applied, this is likely due in part to the low wage rates in the fair wage schedules.

On May 8, 2018 Ontario passed the Government Contract Wages Act, 2018, however it is not yet enacted. It is designed to protect workers employed in the construction sector, building maintenance and security related jobs under contract with the Government of Ontario. Its intent was to have workers in these industries be paid the prevailing wage in their respective sectors. Private-sector contractors and subcontractors will be required to pay according to those rates. At this time there is no indication that Government Contract Wages Act, 2018 will be enacted.

Comparison with the City of Toronto's Fair Wage Policy

The City of Toronto Fair Wage Policy has been adopted since 1893. Similar to the provincial Fair Wage Policy, the City of Toronto Fair Wage Policy ensures that workers on City of Toronto Contracts are paid wages that are harmonized with the prevailing wage in the industry and/or union rates.

The last update to the City of Toronto's Fair Wage Schedules came into effect on August 1, 2017. This covered the period from May 2016 to May 2019. The updated rates are scheduled to be released in mid-2021. Additionally, the City's Fair Wage Schedules capture items such as worker benefit rates, vacation and holiday pay, overtime and hours of work. The City does not have a minimum value threshold when it comes to application of the Fair Wage Policy. The enforcement and compliance of the Fair Wage policy falls under the responsibilities of the Fair Wage Office. The enforcement of the Policy also includes site visits to ensure compliance, complaint investigations, settlement of labour related disputes and collection of evidence should the City of Toronto receive a grievance from a Labour Trade Union to which the City is signatory.

The City of Toronto's Fair Wage Office engages in activities to ensure that the correct Fair Wage Schedule is applied to the procurement contracts at the City of Toronto. The Fair Wage Office verifies compliance of contractors and subcontractors prior to award and, when possible, during a project. The Office maintains positive working relationships with trade unions, cooperates with City agencies and works with industry representatives in various capacities to provide information on the policy, make sector determinations and gather information.

Workers are able to contact the Fair Wage Office directly should they have a question and/or concern with regards to labour practices on a jobsite and can reference the Fair Wage Schedules on the website to see if they are paid correctly.

Work Plan 2021

The Fair Wage Office shall:

- Implement changes to the Fair Wage Policy and Procedures to reflect the decision from the Queensway Judicial Review and the outstanding Auditor General recommendations.
- Continue to focus on proactive investigations of building maintenance contracts, review payroll documentation, and enforce policy provisions to ensure firms compliance when doing business with the City.
- Monitor construction companies, general contractor and sub-contractors, by conducting site investigations and field interviews on the project to ensure workers are paid proper wages in accordance with Fair Wage Schedule(s).
- Carry out strategic and coordinated enforcement action in industries that have historically demonstrated high incidence of a variety of wage and hour violations such as waste management.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix A - Fair Wage Office - 2019 Non-Compliant Firms

Appendix A Fair Wage Office – 2019 Non-Compliant Firms

Fair Wage Non-Compliant		Alleged Labour Trade Non-Compliant	
1.	Leedwood Ltd.	1.	Direct Construction
2.	Skysea Flooring	2.	Dufferin Construction
3.	North on 60	3.	Martinway Contracting
		4.	Buttcon Construction/Atlas Construction Ltd.

Total number of investigations completed, refer to Fair Wage Office – 2019 Annual Report Table 1.