

Fair Wage Office - 2022 Annual Report

Date: May 15, 2023

To: General Government Committee

From: Manager, Fair Wage Office

Wards: All

SUMMARY

This report provides an overview of the activities of the Fair Wage Office for 2022.

RECOMMENDATIONS

The Manager, Fair Wage Office recommends that:

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

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendation in this report. The Net Operating Budget in 2022 was \$435,930 and was included in the Office of the Controller 2022 Approved Operating Budget.

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

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, the goal is to increase awareness of workers' rights. This is particularly important for 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 in the established complaint

handling process. Through these efforts, workers and employers will be better informed about their rights and responsibilities. Workers, vendors and the general public are able to contact the office directly and review wage rates by visiting the Fair Wage Office website at <https://www.toronto.ca/business-economy/doing-business-with-the-city/understanding-the-procurement-process/fair-wage-office-policy/>.

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, Chapter 67, Fair Wage, 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

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 workplace 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 applicable Fair Wage Schedules as committed to during the procurement process and contract award.

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.. As a compliance mechanism, the by-law ensures that the workers

receive the appropriate Fair Wage Rate and this can contribute to ensuring quality and value work being performed by properly trained workers in a safe environment.

Key elements of the Fair Wage program involve:

- Verifying contractor(s) or sub-contractor(s) eligibility;
- Conducting on-site investigations and interviews with labourers & mechanics, trade workers/personnel, and 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.

The Fair Wage office ensures that workers are paid, by either requesting the vendor pay them directly or by withholding money owed to the contractor and paying the workers. Additionally, the Fair Wage Office will track the contraventions, publish first time offenses in the report and may recommend frequent contraveners be disqualified. Names of vendors that have been involved in construction grievances may also be included.

Investigations from the period of 2004-2022 recovered approximately \$5.5 million in back wages to 4,294 workers. These workers encountered certain contractor or sub-contractor 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.

2022 Highlights

Table 1 provides an overview of some of the different types of activities the Fair Wage Office engaged in and the volume of each activity type for 2019-2022. The dollar value of fair wage violations is also provided.

Table 1. Overview of Fair Wage Office Activities, 2019-2022

Activity Type	2019	2020	2021	2022
Number of Firms Reviewed	2574	2684	3020	2851
Number of Firms Approved	2522	2654	2948	2720
Number of Tenders/RFQs/RFPs/DPOs/Sole Source Requests	1543	1756	1809	1835
Number of Site Visits Conducted	121	22	11	21
Total Investigations Conducted	40	25	28	33
Fair Wage Policy Investigations	25	12	14	17
Labour Trade Contractual Obligations Investigations (LTCO)	15	13	14	16
Value of Violations (Fair Wage Policy and LTCO)	\$366,346	\$368,410*	\$22,033	\$131,376

Number of Contractors Cited for First Violation	3	0	2	6
Value of Fair Wage Violations	\$346,843	\$349,009*	\$22,033	\$92,023
Number of Workers Receiving Back Wages	241	279*	57	30
Value of Fair Wage Policy Administration Fees Collected	\$50,519	\$49,702*	\$3,304.97	\$11,870
Number of Grievances Investigated	12	11	12	12
Value of LTCO Violations	\$19,500	\$19,400	\$13,000	\$39,353

*Amounts include the 2019 Miller Waste investigation figures which spans over two years from beginning to end and was resolved in mid-2020 and reported on in March 2022 as part of the 2020-2021 Fair Wage Office Annual Report. This includes \$319,059 in Fair Wage violations related to 260 workers, and \$47,858 in administrative fees collected.

Fair Wage Violations

Much of the Fair Wage Office's work involves investigating contractors' compliance and reviewing payroll information. This is achieved through verifying payroll records, wages paid, vacation pay, hours of work, daily logs, cancelled cheques and worker job classifications, among other information.

In 2022 the Fair Wage Office conducted twenty-one (21) site visits and thirty-three (33) investigations. Seventeen (17) investigations pertained to the Fair Wage Policy and the remaining sixteen (16) investigations were regarding the City's Labour Trade Obligations. Of the seventeen (17) Fair Wage Policy investigations, six (6) firms were cited for their first violation, as identified in Appendix A of this report. If any firm is 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 the General Government Committee and may recommend the firm be disqualified from conducting business with the City for a period of two years, inclusive.

In 2022, back wages and benefits owed to workers from non-compliant contractors totalled \$92,023.27. These funds were collected and distributed to a total of thirty (30) workers. In addition, the Fair Wage Office collected a total of \$11,870.85 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 to minimizing the City's liabilities, mitigating risk and avoiding costly litigation and labour trade grievances brought against the City.

The Fair Wage Office reviews and approves contractors and sub-contractors for compliance with the Fair Wage Policy and the Labour Trades Obligations in the Construction Industry, prior to contract award. The Fair Wage Office also supports People and Equity staff with respect to grievances filed against the City by labour trade

unions for alleged violation of the City's Labour Trade Contractual Obligations in the Construction Industry and/or the application of a collective agreement or 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 assessing 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 the grievance is referred to the Ontario Labour Relations Board.

Fair Wage Office staff, together with staff from People and Equity and their Legal staff, regularly engage in informal and 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 to have open and frank discussions. These efforts have directly resulted in the resolution of seven (7) Labour Trade grievances in 2022, as well as faster case processing, thus avoiding costly grievance hearings at the Ontario Labour Relations Board. In 2022, a total value of \$39,353.28 in negotiated grievances filed against the City of Toronto were resolved. The firms that were involved in the resolution of Labour Trades grievances in 2022 are listed in Appendix A.

Major Investigations

Kenaidan and The Post Hole Company

In January of 2022, the Fair Wage Office began an investigation into Kenaidan Contracting Ltd, (Kenaidan). Following a payroll review of Kenaidan and their sub-contractor, The Post Hole Company (TPHC), the Fair Wage Office determined that Kenaidan and TPHC violated the Fair Wage Policy by failing to pay \$17,699.28 in wages to six (6) of their employees for wooden fencing installation work carried out at Richview Pumping Station. The work carried out by these workers fell under the jurisdiction of the Carpenter's Union (Local 27), however, none of the workers were union members. In addition, the workers were paid below the prescribed Fair Wage rate for the work they carried out. This constitutes Kenaidan and TPHC's first violation of the Fair Wage Policy.

Renokrew/JFON

In April of 2021, the Fair Wage Office began an investigation into 1568796 Ontario Inc. o/a Renokrew (Renokrew), after a Labour Trades grievance was filed against the company. Following a payroll review of Renokrew and their sub-contractor JFON Construction Inc. (JFON), the Fair Wage Office determined that Renokrew and JFON violated the Fair Wage Policy by failing to pay \$63,490.25 in wages to 15 of their employees for work carried out at the Davenport Shelter, located at 348 Davenport Avenue. The grievance filed by the Carpenters Union (Local 27) asserted that the work should have been performed by members of their Union. In addition, none of the workers were paid the prescribed Fair Wage rate for the work they carried out. This constitutes Renokrew's and JFON's first violation of the Fair Wage Policy.

Miller Waste

Miller Waste Systems Inc. (Miller Waste) has a contract with the City of Toronto for the processing of leaf and yard waste at their facility. Under the contract, it was estimated that 20% of the facility's leaf and yard waste capacity was to come from the City of Toronto (with the other 80% coming from other sources). Miller Waste proactively worked with the Fair Wage Office when they factored in a ratio of 20% when paying their employees, to ensure that they are paid in accordance with the Fair Wage Policy. At the end of the most recent contract year, the City determined that the amount of waste it sent to Miller Waste accounted for 29% of the total leaf and yard waste the supplier processed over the course of the year. Miller Waste was informed of the revised ratio and the vendor paid their workers additional wages to ensure they met the Fair Wage requirements. It was determined that this correction was not a violation for Miller Waste. The supplier could only estimate what ratio of waste they would be processing and upon review of the final totals the supplier paid the workers the outstanding wages. The total additional pay received by the workers was \$10,833.84.

Non-Traditional Application of the Fair Wage Policy

The Fair Wage Office traditionally performs its compliance activities as part of the procurement process at the City. The Fair Wage Policy applies to all City work and not just activities that fit neatly into the procurement process. In order to ensure compliance with the Fair Wage Policy, the City's Fair Wage Office provides information, support and compliance verification services. In 2022 the Fair Wage Office was consulted on more than a dozen City projects that did not get processed through the traditional channels for City Purchasing. The Fair Wage Office supports these projects by providing information to project developers, not-for-profit organizations and City divisions on the application of the Fair Wage Policy.

Work Plan 2023

In 2023, the Fair Wage Office intends to:

- Implement changes to the Fair Wage Policy and Procedures to reflect the Divisional Court's decision from the Queensway Judicial Review and the outstanding Auditor General recommendations.

- Update the Fair Wage Schedules for 2022-2025 and report to General Government Committee and Council by the end of 2023.
- Update Municipal Code Chapter 67, Fair Wage, to improve clarity and enforceability.
- Finalize a written grievance handling procedure between Purchasing and Materials Management staff (including Fair Wage Office staff) and People and Equity Staff.
- Continue to focus on proactive investigations, review payroll documentation, and enforce policy provisions to ensure firms' compliance when doing business with the City.
- Monitor construction companies, general contractors and sub-contractors, by conducting site investigations and field interviews on projects to ensure workers are paid proper wages, vacation pay and benefits in accordance with Fair Wage Schedule(s).
- Carry out strategic and coordinated enforcement action in industries that have historically demonstrated high incidences of a variety of wage and hour violations, such as office cleaning and janitorial services.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix A - Fair Wage Office - Companies that were cited for their first violation of the Fair Wage Policy and companies that have been involved in the resolution of Labour Trades grievances in 2022

APPENDIX A

Fair Wage Office - Companies that were cited for their first violation of the Fair Wage Policy and companies that have been involved in the resolution of Labour Trades grievances in 2022

Fair Wage Non-Compliant	
1.	1568796 Ontario Inc. o/a Renokrew
2.	JFON Construction Inc.
3.	Direct Construction Company Limited
4.	Incore Interiors Ltd.
5.	Kenaidan Contracting Ltd.
6.	The Post Hole Company

Resolution of Labour Trades Grievances	
1.	Joe Pace & Sons Contracting Ltd.
2.	Kenaidan Contracting Ltd.
3.	MJ Dixon Construction Ltd.
4.	Steelcore Construction Ltd.
5.	The Atlas Corporation
6.	Buttcon Ltd.
7.	Brook Restoration Ltd.