

Legislation Text

File #: 210421-A, Version: 1

Amending Section 17-107 of The Philadelphia Code, entitled “Contractors: Labor Management Relationships” to create a new classification of covered airport service employees to receive prevailing wages; to extend prevailing wage requirements to third-party contracts with City-related agencies, lessees and sublessees of the City, recipients of City financial assistance, and purchasers of City property; to further provide for administration and enforcement, including reporting on contractor compliance with prevailing wage requirements; and to provide for a civil action to remedy violations, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-107 of The Philadelphia Code is hereby amended to read as follows:

TITLE 17. CONTRACTS AND PROCUREMENT

* * *

CHAPTER 17-100. PROCUREMENT CONTRACTS

* * *

§17-107. Contractors: Labor Management Relationships.

(1) Definitions. In this Section, the following definitions apply:

* * *

(b) *City-Work*. All building or construction work under a contract with the City, for compensation that exceeds two thousand dollars (\$2,000), including repair, alteration and remodeling done on behalf of the City under a contract awarded by the City; and all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air-conditioning systems produced as non-standard items for such work; and all other non-professional service contracts with the City for compensation that exceeds two hundred thousand dollars [(\$200,000),] (\$200,000); or in the case of building service contracts *or covered airport service contracts, contracts* for compensation that exceeds one hundred thousand dollars [(\$100,000);] (\$100,000) in a one-year period; and subcontracts of all or a portion of such non-professional service contracts.

* * *

(h) *Non-professional Service Contracts*. Contracts for the provision of the following non-professional services only: landscaping; building care and maintenance; custodial/janitorial housekeeping; *covered airport services*; security guard service; demolition; snow removal; stucco; roof capping, furniture moving; locking systems and repairs; mechanical/HVAC maintenance and repairs; elevators, escalators, and

electrical maintenance and repair, and subcontracts of all or a portion of such contracts. Non-professional services performed under the terms of a professional service contract, whether directly or by reason of a subcontract, shall be subject to this Section if the compensation for non-professional services under the prime contract exceeds two hundred thousand dollars (\$200,000); or in the case of building service contracts *and covered airport service contracts*, the compensation for [building] services under the prime contract exceeds one hundred thousand dollars (\$100,000).

* * *

(m) *Prevailing Wages.*

* * *

(.5) *With respect to the classification of Covered Airport Service Employee, both:
(.a) the greater of:*

(i) the wage paid to the majority (more than fifty percent (50%)) of workers in the classification of security officer (Guard I) at similar locations in the City of Philadelphia, or, if the same wage is not paid to a majority of those employed in that classification, the average of the wages paid, weighted by the total employed in the classification at similar locations; provided that the Director is authorized to determine a reasonable approximation of the foregoing; or

(ii) the wage determined by the Secretary of Labor under the Service Contract Act, 41 U.S.C. §§ 351 et seq. for the classification of Guard I for Philadelphia County; or (iii) the wage set forth in § 17-1305(1);

and

(.b) the greater of:

(i) the additional benefits, or the monetary equivalent of such benefits, provided to the majority (more than fifty percent (50%)) of workers in the classification of security officer (Guard I) at similar locations in the City of Philadelphia; or

(ii) the additional benefits, or the monetary equivalent of such benefits, determined by the Secretary of Labor for the job classification of Guard I for Philadelphia County under the Service Contract Act, 41 U.S.C. §§ 351 et seq.;

* * *

(t) *Covered Airport Service Employee. A person performing:*

(.1) ground handling services, as defined at § 18-201(8)(b), including but not be limited to: ramp agent; baggage handler; tug operator; freight handler; passenger service agent; line queue attendant; ground transportation agent; skycap; terminal shuttle driver; unattended minor attendant; shuttle bus operator; dispatcher; wheelchair attendant; passenger escort; VIP attendant; passenger club attendant; security agents for ramp, gate, cargo, checkpoint and/or terminal facilities; aircraft and

lavatory cleaner; aircraft caterer; cleaner for ramp, gate, cargo, and/or terminal facilities; aircraft and equipment fueler; aircraft and equipment deicer; and baggage inspection services;

(.2) terminal retail or food and beverage concessions services at a City airport facility;

(.3) services related to the preparation or delivery of food for consumption on airplanes departing from a City airport facility; or

(.4) parking services, including but not limited to: cashier, lot attendant, inventory control clerk and personnel otherwise related to the operation and maintenance of parking facilities located within a City airport facility.

The term Covered Airport Service Employee shall not include any building service employee; any employee employed with any automobile rental operator; any employee of the United States Government; or any employee of a city, state or federal law enforcement agency.

(u) Covered Airport Service Contract. Any contract or sublease governing or related to the provision of services performed by covered airport service employees at any property subject to a lease defined at § 17-107(11)(a).

(v) Covered Airport Service Contractor. Any lessee of the City, and any contractor or sublessee thereof, who, through direct employment or contract with a third party, provides services performed by covered airport service employees at any property subject to a lease defined at § 17-107(11)(a).

* * *

(5) Employee Complaints.

(a) No person shall take any adverse action against any other person (including discharge or other discrimination in employment) for filing a complaint under this [subsection] *subsection, or an action under subsection (14)*, or for otherwise reporting any violation of this Section or instituting or testifying in any proceeding relating to any violation of this Section.

(6) The Unit shall have the responsibility of administering this Section and in connection therewith shall:

(a) Maintain a current schedule of the prevailing wages and working conditions for each occupational classification in each craft, trade, service and industry involved in [City-work] *City-work, and make such schedules publicly available at the Unit's office and on the City's website.*

(b) Receive and refer to the Commissioner under whose supervision a City-work contract is being performed, complaints against any contractor or subcontractor for alleged violations of this Section or the provisions of the City-work contract required hereby. Thereafter, the Director shall investigate *all allegations* of such [complaints] *complaints, including whether employees were paid the applicable prevailing wages and given the applicable prevailing working conditions*, and in connection therewith or with respect to any investigation shall have full power and authority to subpoena any witness, books, records, or other data of any person for the purposes of obtaining information pertinent to such investigation. The Director shall make a finding in writing with respect to *all allegations* of each complaint filed, *including a finding whether employees*

were paid the prevailing wages and given prevailing working conditions, and shall send a copy thereof to the complainant and the contractor and shall maintain it on file. Upon request, the unit shall provide any affected contractor or subcontractor with a hearing, pursuant to subsection (8)(e).

* * *

(d) Prepare a report on January 1 of each year containing the following information and make such report publicly available at the Unit's office and on the City's website:

(.1) the name of every contractor and subcontractor awarded a City-work contract that was awarded or in effect during the prior calendar year;

(.2) the name of every party to a contract, lease, grant, condition or other agreement entered into by the City with any City-related Agency that was entered into or in effect during the prior calendar year;

(.3) the name of every lessee of City property or property owned or managed by a City-related agency for leases entered into or in effect during the prior calendar year;

(.4) the name of every recipient of financial assistance that was given or in effect during the prior calendar year;

(.5) the name of every purchaser who executed a contract for purchase of City property during the prior calendar year.

(.6) the number of complaints filed under this Section;

(.7) the number of investigations conducted by the Unit of complaints reported in section 17-107(6)(d)(.6); and

(.8) the name of every entity identified in subsection (.1)-(.5) found to have violated this Section, and for each such entity, the subsection(s) found to have been violated, the amount of any back pay found to be owing to employees, and the amount of back pay recovered by the Unit on behalf of such employees.

(e) Provide a complaint form for reporting violations of this Section and make such form publicly available at the Unit's office and on the City's website.

* * *

(8) Enforcement.

* * *

(b) Upon a finding by the Director of a failure by any contractor or subcontractor to pay the applicable prevailing wage to any employee(s), or a finding that a contractor or subcontractor violated subsection (5)(a) of this Section, the Director [may] shall direct the appropriate department(s) to withhold from the contractor on the applicable City-work contract such sums as the Director, in his or her discretion, believes

appropriate to insure compliance, which [may] *shall* include but not be limited to any sums remaining due on the contract; or the amount determined still to be owing to the employees had the prevailing wage requirements been met *or had the requirements of subsection (5)(a) of this Section been met*; or a sum equal to one hundred fifty percent (150%) thereof. Such withheld moneys shall be retained by the City until all employee(s) on the applicable City-work contract have received the appropriate wage payments under this Section. *The Director shall direct the contractor or subcontractor to pay back pay to each affected employee in the amount owed due to the failure of the contractor or subcontractor to pay prevailing wages, and to comply with this Section. With respect to each employee terminated in violation of subsection 5(a) of this Section, the Director shall direct the contractor or subcontractor to reinstate such employee and pay such employee any back pay owed.*

(.1) Upon the conclusion of any appeals, or the expiration of time in which an appeal may be filed, from a finding of violation by the Director or a decision by the Director to direct the withholding of any sums, the Director [may] *shall* direct the appropriate department(s) to make such payments directly to affected employees, out of any withheld sums, as may be necessary to remedy the [violation.] *violation if the contractor or subcontractor fails to make the required payments to the employees.*

* * *

(10) City Related Agencies. Any contract, lease, grant, condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-related Agency, in the procurement of (i) all building or construction work for compensation that exceeds twenty-five thousand dollars (\$25,000), including repair, alteration and remodeling done on behalf of the City-agency under a contract awarded by the City-agency; and (ii) all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air- conditioning systems produced as non standard items for such work; and (iii) all other non-professional service contracts with the City-agency for compensation that exceeds two hundred thousand dollars (\$200,000), including building service contracts *and covered airport service contracts* except that such contracts need only exceed one hundred thousand dollars (\$100,000); purchased pursuant to such contract, lease, grant, condition or other agreement with the City, to abide by the provisions of [subsection 17-107(2)] *this Section*, as if such procurement were for City-Work. The City may waive the requirements of [subsection 17-107(2)] *this Section* if the Procurement Commissioner certifies that applying said prohibition may result in the loss of federal, state or similar funds or grants. The requirements of this [subsection and subsection 17-107(2)] *Section* shall not apply to any City funded or City-related Agency funded housing rehabilitation or construction project that involves eight (8) or fewer housing units. *Any party to a covered contract, lease, grant, condition or other agreement with the City or City-Related agency shall be bound by the provisions of this Section as if such procurement were for City-Work, regardless of whether such contract, lease, grant, condition or other agreement includes such requirement.*

(11) Leases and Subleases.

(a) Lease means a lease of City property or property owned or managed by a City-related [agency:] *agency*, which contains, or will contain, a building or complex of buildings of at least 50,000 square feet of at least one of the following types: commercial office, hospital, university, stadium, convention center, airport or port; which contains or will contain a residential building or complex of buildings of at least fifty (50) dwelling units, whether owned or rented by the occupants thereof; or that is leased to an authority operating a special services district or a NIDMA operating a business improvement district. Leases shall be deemed to include subleases, including tenant [leases] *leases, and any concession agreement that is part of a master airport concession program.*

(b) Building service employees *and covered airport service employees* employed at properties subject to a lease as defined herein, whether employed directly by the lessee, or by a [sublessee or tenant,] *sub-lessee, tenant, contractor, or subcontractor of the lessee*, or through a property management company, will receive the prevailing wage.

(c) Every lease entered into by the City or City-related agency shall contain a provision that all building service employees *and covered airport service employees* at the subject premises shall be paid at least the applicable prevailing wages; that the lessee will require all [sub-lessees and tenants] *sub-lessees, tenants, contractors, and subcontractors* to, and lessee shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and lessee a contractor; and that, upon any violation of this Section and any regulations promulgated hereunder, which is not promptly remedied, such additional sums as may be necessary to remedy the violation shall become due and owing under the lease. The City [may] *shall* make payments directly to affected employees, out of such additional sums, as may be necessary to remedy the violation.

(d) *Any lessee of a lease with the City or City-Related agency shall be bound by the provisions of this Section as if such work were City-Work and lessee were a contractor, regardless of whether such lease includes such requirement.*

(12) Recipients of Financial Assistance.

* * *

(c) Conditions.

(.1) Unless prohibited under state law, any contract, grant, condition or other agreement entered into by the City or any City-related Agency with a recipient of financial assistance shall contain a provision that all building service employees at the property shall be paid at least the applicable prevailing wages; and that the recipient will require all developers, owners, *contractors*, lessees and tenants to, and the recipient shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and the recipient a contractor.

(.2) Unless prohibited under state law, as a condition of obtaining financial assistance, the City or City-related agency shall require the recipient to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City [may] *shall* make or direct payments to be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.

(.3) Where state law prohibits the City or City-related agency from placing the conditions set forth above in subsections (.1) and (.2) on the receipt of financial assistance, a recipient of financial assistance shall in all other respects be bound by the terms of this Section and shall be required to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City [may] *shall* make or direct payments to be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.

* * *

(e) *A recipient of financial assistance shall be bound by the provisions of this Section as if such work were City-Work and the recipient were a contractor, regardless of whether any contract, grant, condition or other agreement with the City or City-Related Agency includes such requirement, and regardless of whether the recipient receives the financial assistance pursuant to a contract, grant, condition or other agreement with the City or City-Related Agency, and shall be required to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City shall make or direct payments to be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.*

(13) Sale of Property.

* * *

(b) *The City or City-related agency shall require the purchaser to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City [may] shall make or direct that payments be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.*

* * *

(d) *Any purchaser shall be bound by the provisions of this Section as if such work were City-Work and the purchaser were a contractor, regardless of whether the contract or agreement includes such requirement.*

(14) Civil Action.

(a) *The Director, the City Solicitor, any person aggrieved by a violation of this Chapter, or any entity a member of which is aggrieved by a violation of this Section, may bring a civil action in a court of competent jurisdiction for violations of this Section.*

(b) *If during the pendency of a determination by the Director, prior to the issuance of a final decision, a complainant brings a private action under this Section in a court of competent jurisdiction, seeking relief based upon the same facts and allegations as the complainant's complaint to the Director, or affirmatively or by consent opts to participate in any such private action, that complainant's complaint to the Director shall be deemed withdrawn with respect to any defendant in such action. This Section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of the complainant's complaint in court.*

(c) *Nothing in this Section shall be construed to require a complaint to be filed with the Director before bringing an action in court or before any other governmental agency.*

(d) *Upon a complainant's prevailing in an action brought pursuant to this Section, the court shall order back pay and benefits, reinstatement, other injunctive relief, and any other damages suffered as a result of violations of this Section, and reasonable attorney's fees and costs. In addition, the court shall impose liquidated damages payable to the complainant up to a maximum of three hundred dollars (\$300) per violation. Each act of retaliation, each underpayment of any employee, each late payroll, each failure to give the Unit access to documents or employees, and each interference with such access or interview with an employee shall*

constitute a separate violation.

SECTION 2. Effective Date. This Ordinance shall take effect immediately except that, for those Covered Airport Service Employees defined by Subsection (1)(t)(.2), Subsection (1)(m)(.5)(.a) shall not take effect until January 1, 2022, and Subsection (1)(m)(.5)(.b) shall not take effect until July 1, 2023.

SECTION 3. Existing Leases. Notwithstanding § 17-107(11)(d), the prevailing wage requirements under this Ordinance applicable to covered airport service employees employed at properties subject to a lease under § 17-107(11) shall also apply to existing leases in effect on the effective date of this Ordinance provided that the lessee and the City enter into a written amendment to such existing lease applying the requirements of this Ordinance to covered airport service employees for the remaining duration of such lease. The requirements of this Ordinance shall apply to an extension of an existing lease where the City has discretion over the grant of such extension.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.