

CITY OF LOS ANGELES



RULES AND REGULATIONS

IMPLEMENTING

THE LIVING WAGE ORDINANCE

EFFECTIVE OCTOBER 5, 2016

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The Department of Public Works, Bureau of Contract Administration (“BCA”) promulgates these Rules and Regulations as the Designated Administrative Agency (“DAA”) pursuant to Sections 10.37.1(h) and 10.37.7 of the Los Angeles Administrative Code (“LAAC”). Each Awarding Authority shall cooperate to the fullest extent with the BCA in the administration of the Living Wage Ordinance (“LWO”). The BCA may amend or revise these LWO Rules and Regulations from time to time, consistent with applicable law.

SCOPE OF BCA AUTHORITY

Under LAAC Sections 10.37.6 and 10.37.7, the BCA administers, monitors, and enforces the LWO. When necessary to carry out its function as the DAA, the BCA may conduct inquiries and investigations into areas outside of the LWO to determine compliance with the LWO.

DEFINITIONS

For purposes of these Rules and Regulations, the definitions set forth in LAAC Section 10.37.1 are incorporated herein by reference. In addition, the following definitions shall apply in these Rules and Regulations:

“**Agreement**” includes a contract for services, leases or licenses, subleases or sublicenses, loan agreements, agreements involving City financial assistance, grant-funded agreements, and permits.

“**Bidder**” includes an applicant for any Agreement that is subject to the LWO, whether under a competitive bid, request-for-proposal (RFP) or other procurement process.

“**BCA**” refers to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance.

“**Child Care Worker**” means an employee whose work on an Agreement involves the care or supervision of children 12 years of age and under.

“**Employee**,” as defined in LAAC Section 10.37.1(i) of the LWO and for purposes of these Rules and Regulations, includes full-time employees, part-time employees, probationary employees, and trainees. For purposes of these Rules and Regulations, an owner of a business shall not be considered an employee.

“**Managerial Employee**” or “**Supervisory Employee**” as used in LAAC Section 10.37.1(i) of the LWO means a person who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate Employees, or the responsibility to direct them, adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such

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authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

“Confidential Employee” as used in LAAC Section 10.37.1(i) of the LWO means an Employee whose duties involve access to confidential information usually in regard to Employer's labor relations.

“Feasibly” as used in reference to services that the City's employees could perform, means that the performance by City employees is not prohibited by law under the circumstances, if given adequate financial and staffing resources. Awarding departments must be able to provide BCA with a 1022 Determination.

“Prime Contractor” means an Employer, a contractor, lessee, licensee, and City financial assistance recipient that has executed an Agreement with the City.

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REGULATION #1: DETERMINING APPLICABILITY OF LWO TO AGREEMENTS

Departmental Determination of Coverage

An Awarding Authority is responsible for making an initial determination of whether an Agreement is subject to the LWO. However, the BCA will make the final decision. If the Awarding Authority is incorrect, the Employer is still subject to the requirements of the LWO. The Awarding Authority shall apply the following guidelines in making the initial determination of coverage:

(a) Liberal Interpretation and Rebuttable Presumption of Coverage

An Agreement, request for proposal (RFP), or request for bid (RFB) is presumed to be covered by the LWO pursuant to LAAC Section 10.37.13. The Awarding Authority shall incorporate the standard LWO contract language referred to in Appendix A into the Agreement, RFP, or RFB unless the Agreement, RFP, or RFB is not covered by the LWO pursuant to Regulations # 2 and # 3.

(b) Determination of Whether an RFP/RFB or Agreement for Services Meets the LWO Threshold

An Awarding Authority shall use the following guidelines, in addition to the provisions specified in the LWO, to determine whether an Agreement for services meets the time or monetary thresholds of the LWO:

- (1) Time: Three Months in Duration: In determining whether an Agreement is 3 months or longer in duration, the Awarding Authority shall calculate the term of the Agreement using the starting date of the original Agreement and the ending date that appears in the most recent amendment, modification, renewal or extension. An Agreement previously exempt from the LWO because it did not meet the time threshold of the LWO may become subject to the LWO because an amendment, modification, renewal, or extension increases the term of the Agreement. In that case, the Awarding Authority shall incorporate the standard LWO contract language referred to in Appendix A into the Agreement.
- (2) Money: Over \$25,000: In determining whether an Agreement exceeds \$25,000, the Awarding Authority shall calculate the total amount of the Agreement by adding together the amount provided for in the original Agreement and all amendments, modifications, renewals, or extensions. An Agreement previously exempt because it did not meet the monetary threshold of the LWO may become subject because an amendment, modification, renewal, or extension increases the total amount of the Agreement. In that case, the Awarding Authority shall incorporate the standard LWO contract language referred to in Appendix A into the Agreement.
- (3) An Agreement with maximum amounts or for services to be performed as-needed:

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- (A) If an Agreement specifies a maximum amount to be expended, the Awarding Authority shall use the maximum amount stated in the Agreement to determine whether the Agreement meets the monetary threshold of more than \$25,000.
- (B) If an Agreement is for services that are to be performed on an as-needed basis, the Agreement is presumed to be covered by the LWO. The Employer will not be required to comply with the wage and benefit requirements of the LWO until the City has used over \$25,000 in services from the Employer or the invoices submitted by the Employer total over \$25,000. Once the \$25,000 threshold is exceeded, the Employer must comply with all requirements of the LWO.
- (4) An Agreement to purchase or rent goods or equipment: This Agreement may be subject to the LWO if the agreement is over \$25,000, at least 3 months in duration, and the Agreement contains provisions for services that are not incidental services.
- (5) An Agreement which calls for an Employer to perform in-kind services as repayment to the City: The amount used to determine the monetary threshold shall be the value of the consideration that the Employer receives in return for the in-kind services provided to or for the City.

(c) Public Lease and License

Leases and licenses which involve services to be performed on City property are presumed subject to the LWO if they meet any one of the criteria stated in Section 10.37.1(l) of the LWO.

(d) Agreements that Give the City a Unilateral Option to Renew

If an Agreement is not yet subject to the provisions of the LWO, but the services called for under the Agreement are performed by workers who earn less than the LWO wage rate, the Awarding Authority should not exercise any unilateral option to renew the Agreement unless the Employer agrees to comply with the provisions of the LWO by incorporating the standard LWO contract language referred to in Appendix A into the renewed Agreement or through a supplemental Agreement. When this is not possible, the Awarding Authority should attempt to procure a new Agreement through a new RFP, RFB or other process.

(e) Agreements Made Subject to the LWO by Action of City Council

Agreements made subject to the LWO by an action of the City Council shall be subject to the LWO and all its requirements in the same way as an Agreement determined to be subject by an Awarding Authority. The Awarding Authority or City department responsible for the drafting and/or administration of the Agreement shall be responsible for ensuring that the Agreement complies with the requirements of the LWO and these

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REGULATION #2: RFP/RFB AND AGREEMENT REVIEW PROCESS

Except for Authorizations for Expenditures (AFE) that require no letter of agreement, construction contracts, Agreements with governmental entities, Agreements solely for the purchase or rental of goods, equipment, or property, or Agreements for less than 3 months or less than \$25,000, the Awarding Authority shall follow the procedures outlined in these Rules and Regulations before issuing a RFP, RFB, or awarding or executing any Agreement:

(a) Presumption of Coverage and Incorporation of Standard LWO Contract Language

An RFP, RFB, or Agreement is presumed to be covered by the LWO and must incorporate the standard LWO contract language referred to in Appendix A, unless the BCA has confirmed in writing that the RFP, RFB, or Agreement is exempt from the provisions of the LWO.

(b) Awarding Authority's Initial Determination of the LWO's Applicability to RFPs and RFBs:

The Awarding Authority shall determine if the RFP/RFB is subject to the LWO using the guidelines discussed in Regulation #1.

- (1) If the service to be performed under the Agreement is subject to the LWO, the Awarding Authority shall incorporate into the RFP/RFB the standard LWO contract language and the Bidder/Employer application for exemption form referred to in Appendix A.
- (2) Unless otherwise provided for in Regulation #3, if the Awarding Authority believes that the RFP/RFB is exempt or not covered by the LWO, prior to releasing the RFP/RFB, the Awarding Authority must request written confirmation from the BCA using the application for non-coverage or exemption form referred to in Appendix A.

(c) BCA Confirmation of Exemption or Non-Coverage Required to Rebut Presumption of Coverage

Within ten (10) working days of receipt of an Awarding Authority's application for exemption or non-coverage, the BCA shall make a final determination whether the LWO applies to the Agreement.

- (1) If the BCA approves the request for exemption, the Awarding Authority shall proceed with the normal and customary process of issuing RFPs/RFBs and rating all Bidders for the Agreement. The original request for exemption approved by the BCA shall be incorporated into the executed Agreement. After execution of the Agreement, the Awarding Authority shall provide the BCA a "Departmental Guidance Form" and a copy of the executed Agreement.

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- (2) If the BCA denies the request for exemption, the Awarding Authority shall process the RFP/RFB as subject the LWO.

(d) Department Review of Submitted Bids and Proposals for Exemptions Request

The Awarding Authority shall review the submitted bid or proposal to determine if a Bidder has submitted a Departmental or Non-Coverage/Exemption Application. A Bidder applying for exemption from the LWO must submit a separate Departmental or Non-Coverage/Exemption Application for each bid or Agreement, regardless of whether the Bidder has previously submitted an application, or was granted an exemption in relation to another bid or Agreement.

(e) Non-Coverage/Exemption Submitted with Bid or Proposal

If the Bidder submits a Departmental or Non-Coverage/Exemption Application, the Awarding Authority shall review the application to ensure that all supporting documentation has been submitted, and that the application meets the requirements specified in Regulation #3. If an application has been submitted, the Awarding Authority shall retain copies of the form and any supporting documentation with the Agreement. If an application for exemption has been submitted, the Awarding Authority shall forward the application and supporting documentation to the BCA for confirmation. The BCA shall make a final determination within ten (10) working days of receiving the completed application.

- (1) A determination by the BCA that the Bidder is exempt from the LWO only exempts the Bidder from the LWO in relation to the Agreement currently processed. The BCA approval of the application does not exempt the Bidder for any other bid or Agreement nor does it extend to the Bidder's Subcontractors. The Bidder remains subject to the LWO prohibition against retaliation and the obligation to ensure that all Subcontractors comply with the LWO.
- (2) A determination by the BCA that the Bidder is subject to the LWO obligates the Bidder to comply with all requirements of the LWO.

(f) Selection of Bidder, Award, and Execution of Agreement

In executing an Agreement determined to be subject to the LWO, the Awarding Authority shall incorporate into the Agreement the standard LWO contract language referred to in Appendix A. In executing an Agreement exempt or not covered by the LWO, the Awarding Authority shall retain the original Departmental or Non-Coverage/Exemption Application form approved by the BCA with the Agreement file.

(g) Employee Information and Subcontractor Information

Prior to or by the execution date of the Agreement, the Awarding Authority shall provide the selected Bidder with the Employee and Subcontractor information reporting form(s) referred to in Appendix A. The Awarding Authority shall instruct the selected Bidder to complete and submit the form(s) within 10 days of execution of the Agreement.

(h) Submission of Copies of the Executed Agreement

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Upon execution of the Agreement, the Awarding Authority shall provide to the BCA a copy of the completed "Departmental Guidance Form" found in Appendix A and a copy of the executed Agreement.

(i) Responsibility When More Than One Awarding Authority Is Involved

The Awarding Authority or City department responsible for the drafting and/or administration of the Agreement shall be responsible for ensuring that the requirements of the LWO and these Rules and Regulations are adhered to prior to execution of any Agreement.

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REGULATION #3: CONTRACTS NOT SUBJECT TO LWO

An Agreement may not be subject to the LWO if it meets certain requirements. If the BCA determines that the services called for in an Agreement are not covered by the LWO because the City is legally prohibited from engaging in such services or because it would be highly unlikely under the circumstances for the City to become involved in such services, the BCA may determine the Agreement is not subject to the LWO. When an Agreement is not subject to the LWO, neither the Employer nor any of its Subcontractors working on the Agreement will be subject to the LWO.

(a) Contracts that are not subject to the LWO

Departments do not need to request BCA to approve an exemption and Employers do not need to submit an application.

- (1) Less than three months OR less than \$25,000 - LAAC Section 10.37.1(m):** Service Contracts or Authority for Expenditures that do not meet these thresholds are not subject to the LWO.
- (2) Governmental Entities – LAAC Section 10.37.14(b):** Agreements with governmental entities are not subject to the requirements of the LWO. If an Agreement is not subject to the LWO because the Employer is a governmental entity, Subcontractors performing work for the governmental entity on the Agreement are also not subject to the LWO.
- (3) Purchase of Goods or Property – LAAC Section 10.37.1(m):** Such contracts are not subject to the LWO unless they include a service component that is more than just incidental.
- (4) Construction contracts LAAC Section 10.37.14(a):** Construction contracts are not subject to the LWO unless 1) there are Employees not covered by prevailing wage or 2) if the prevailing wage is less than the required rate in 10.37.2.
- (5) Utilities Companies LAAC Section 10.37.14 (c):** Agreements for work done directly by a utility company pursuant to an order of the Public Utilities Commission.
- (6) City Financial Assistance Recipients (CFAR) Below LWO Thresholds – LAAC Section 10.37.1(f):** Agreements that provide an Employer with City financial assistance intended to promote economic development or job growth (activities that expand the production, distribution or consumption of goods or services, increase the employment or skills level of the city workforce, effect the efficient use of material or nonmaterial resources, or have practicable and industrial significance) are not subject to the LWO if they do not meet either of the monetary thresholds described in the LWO. Thus, such Agreements are not subject to the LWO if the assistance given in a 12-month period is below \$1,000,000 and less than \$100,000 per year on a continuing basis.

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Example: The City approves a loan to a Employer of \$5,000,000 for the development of shopping center that will create new jobs. The loan is for 20 years at an interest rate of 4%. At the time the Awarding Authority grants approval for the loan, the Applicable Federal Rate (AFR) referenced in the LWO is 4.6%. This Amendment is not subject to the LWO because it does not meet the financial thresholds, as explained below:

The amount of financial assistance used to determine whether the Employer meets the LWO thresholds is amount the Employer saves in interest payments. To determine the amount of savings on interest payments (the financial assistance), the annual savings on interest rate is calculated as follows:

Financial Assistance = (Amount of Loan @ AFR) – (Amount of Loan @ City rate)
Financial Assistance = (\$5,000,000 x 4.6%) – (\$5,000,000 x 4%)
Financial Assistance = \$230,000 – \$200,000
Financial Assistance = \$30,000

Thus, the Employer receives \$30,000 in financial assistance per year for the next 20 years. This is less than \$1,000,000 in a year, and less \$100,000 per year on a continuing basis. Therefore, the Employer is not subject to the LWO. No approval from the BCA is required and the Awarding Authority may indicate this on the Departmental Determination of Coverage form.

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REGULATION #4: CBA EXEMPTION

Exemption by Collective Bargaining Agreement – LAAC Section 10.37.12: An Employer subject to provisions of the LWO may, by collective bargaining agreement (CBA), provide that the CBA, during its term, shall supersede the requirements of the LWO for those Employees covered by the CBA. The provisions of the LWO should not be interpreted to require that an Employer reduce the wages and benefits required by a CBA. All parties to the CBA must specifically waive, in full or in part, the benefits required by the LWO. An Employer applying for this exemption shall submit a copy of the CBA. If the CBA does not specifically indicate that the LWO has been superseded, the Employer shall submit written confirmation from the union representing the Employees working on the Agreement that the union and the Employer have agreed to let the CBA supersede the LWO.

- (a) If the final CBA signed by the Employer and the union supersedes the LWO, in full or in part, the Employer shall be considered to be exempt from the LWO's specified provisions for the time period covered by the effective dates of the superseding CBA. The Employer remains subject to all applicable provisions of the LWO for the time period not covered by the superseding CBA. If the Employer has not complied with the LWO requirements during the time period not covered by the superseding CBA, the Employer shall be required to make retroactive corrections for any period of violation, which may include making retroactive payments to affected Employees for the relevant periods of violation.
- (b) If the final CBA signed by the Employer and the union does not supersede the LWO, the Employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date that the Employer first became subject to the LWO. If necessary, the Employer shall provide retroactive payments to affected Employees for any time period during which the Employer did not comply with the LWO.

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REGULATION #5: EXEMPTIONS

Employer Exemptions which Require BCA approval

The following exemption categories require that the BCA approve an exemption application for the exemption to be valid. However, even with an approved exemption, the Employer must still comply with the LAAC Section 10.37.5 of the LWO regarding prohibition against retaliation. If the BCA denies a Bidder or Employer's application for exemption, the Bidder or Employer must comply with all requirements of the LWO.

The exemption categories include:

(a) Non-Profit 501(c)(3) Organizations: A corporation claiming exemption under LAAC Section 10.37.15(b) of the LWO as a corporation organized under Section 501 (c)(3) of the United States Internal Revenue Code must provide the following additional documents in support of the application for exemption:

- (1) A copy of the most recent IRS letter indicating that the Employer has been recognized as a non-profit corporation organized under section 501 (c)(3) of the United States Internal Revenue Code.
- (2) The Departmental Exemption Application referred to in Appendix A must list the salary of the corporation's chief executive officer (CEO), computed on an hourly basis, and the hourly wage rate of the lowest paid worker in the corporation. The salary of the CEO, when computed on an hourly basis, must be less than 8 times what the lowest paid worker is paid on an hourly basis. For the purpose of this exemption, the "chief executive officer (CEO)" means the CEO of the 501(c)(3) corporation that entered into the Agreement with the City, or the highest paid person employed by the corporation if the CEO is not the highest paid employee. The "lowest paid worker" refers to the lowest paid worker employed by the 501(c)(3) corporation that entered into the Agreement with the City, regardless of whether the person works on the City Agreement. In calculating the salary of the CEO and the wage rate of the lowest paid worker, the corporation may not include items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions.

Child Care Workers: Even if a corporation meets the requirements for exemption as a 501(c)(3) non-profit organization, if the corporation provides child care services as part of the City Agreement or employs Child Care Workers who will work on the City Agreement, the corporation must pay all Child Care Workers working on the subject Agreement the required LWO wage rate. All of the LWO requirements, including compensated and uncompensated days off, are applicable to those Child Care Workers.

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(b) Small Business Exemptions for Public Lessees and Licensees – LAAC

Section 10.37.15(a): A public lessee or licensee claiming exemption from the LWO under LAAC Section 10.37.15(a) shall submit the application for “Small Business Exemption” referred to in Appendix A, along with supporting documentation to verify that it meets the requirement that the lessee or licensee employs no more than seven (7) people on and off City property.

- (a) For purposes of this exemption, a lessee or licensee shall be deemed to employ a person if the person works for a company or entity that is owned or controlled by the lessee or licensee, regardless of where the company or entity is located; or if the person works for a company or entity that owns or controls the lessee or licensee, regardless of where the company or entity is located.

Whether the lessee or licensee meets the seven (7) person limit shall be determined using the total number of people employed by all companies or businesses, which the lessee or licensee owns or controls, or which own or control the lessee or licensee. For purposes of this example, “control” means that one company owns a controlling interest in another company.

- (b) If a business operated by the lessee or licensee is part of a chain of businesses, the total number of people includes all everyone employed by the entire chain of businesses unless the business operated by the lessee or licensee is an independently owned and operated franchise.
- (c) A public lessee or licensee shall be deemed to employ no more than seven (7) people if its entire workforce (inclusive of the people falling within the guidelines stated in subsections (a) and (b) above) worked an average of no more than 1,214 hours per month for at least three-fourths of the of the previous calendar year.
- (d) Proof of a small business under LAAC Section 10.37.15(a)(2) may include, but not be limited to, the State of California Form DE – 9c and the equivalent of that form for businesses in other states.

Until the BCA approves the application for exemption, the lessee or licensee shall be subject to the LWO and shall comply with its requirements. If the BCA approves the exemption application, the lessee or licensee shall be exempt from the requirements of the LWO for a period of two years from the date of the approval. The exemption will expire two years from the date of approval, but may be renewable in two-year increments upon meeting the exemption requirements.

(c) CFAR: First Year Financial Assistance Recipients – LAAC Section

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10.37.1(f): A first-year CFAR applying for exemption under LAAC Section 10.37.1(f)(1) of the LWO shall submit documents with proof of its startup date and workforce information. If the BCA grants an exemption on this basis, a first year CFAR is exempt from the LWO for a period of one year from the date the exemption is approved.

- (d) CFAR: Employing Fewer Than Five Employees – LAAC Section 10.37.1(f)(2):** To verify eligibility, a CFAR claiming exemption on the basis that it employs fewer than five (5) Employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year shall submit payroll registers with its exemption application for that twenty (20) week period.
- (e) CFAR: Hardship Waivers for Job Training and Preparation Programs – LAAC Section 10.37.1(f)(3):** A CFAR that employs the long-term unemployed or provides trainee positions intended to prepare Employees for permanent positions may request an economic hardship waiver pursuant to LAAC Section 10.37.1(f). The CFAR must submit to the Awarding Authority documentation of the program’s demonstrated and projected results and economic hardship due to compliance with the LWO. The Awarding Authority will forward the documentation and its recommendation to the City Council for consideration. A copy of this recommendation shall be forwarded to the BCA.
- (f) CFAR: Exemption for Certain Employees – LAAC Section 10.37.1(f):** A CFAR that claims an exemption pursuant to Section 10.37.1(i) for its Employees who expend less than half of their time on the City funded project or for Employees of its service Contractor or Subcontractor, if any, who expend less than half of their time on the premises of the CFAR directly involved with the activities funded by the City shall be responsible for maintaining records of applicable hours and descriptions of work performed to substantiate the exemption. The CFAR shall submit this documentation with its exemption application referred to in Appendix A.
- (g) Students – LAAC Section 10.37.15(c):** High school and college students employed in a work-study or employment program lasting less than three months will be exempt from the LWO. Other students participating in a work-study program will be exempt if the Employer can verify to the BCA that:
- (i) The program involves work/training for class or college credit and student participation in the work-study program is for a limited duration, with definite start and end dates; or
 - (ii) The student mutually agrees with the Employer to accept a wage below the applicable LWO rate based on a training component desired by the student; or

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(iii) The amount paid to the student is in the form of a scholarship or other stipend that is not based on the amount of work performed or number of hours worked.

To verify that the students are part of a work-study or employment program not covered by the LWO's wage and benefits requirements, the Employer must submit documentation detailing program policies and guidelines, the amount paid to the students, and any other relevant documentation requested by the BCA.

(h) Employee's Health Benefit Waiver Request: An Employee can request the BCA to waive the LWO's health benefit provisions if they provide proof they receive health benefits pursuant to LAAC Section 10.37.15(e). If the waiver is approved, the Employee is only entitled to the applicable hourly wage rate without health benefits. Should the BCA provide the Employee a waiver, the Employee must provide a copy to his/her Employer and wait until the Employer can reasonably remove the Employee from the health benefits plan (usually during the enrollment period).

An approved waiver does not require an Employer to waive its health plan benefits for any Employees. Since the Employer is not required to waive the health plan benefits, the BCA recommends an Employee first ascertain the Employer's agreement to accept the waiver.

A determination by the BCA that a Bidder or Employer is exempt from the LWO applies only to the Agreement for which the request or application was submitted. The BCA approval of the request or application for exemption does not exempt the Bidder or Employer for any other bid or Agreement. The exemption approval does not extend to any Subcontractor unless the Subcontractor separately applies for and is granted an exemption from the LWO.

Agreement Exemptions which Require BCA approval

Grant-funded Services: Agreements let by the City involving federal or state grant funds shall be subject to the LWO unless the grant-funding agency indicates in writing that the provisions of the LWO should not apply. The Awarding Authority shall provide a copy of grant-funding agency's determination to the BCA. If BCA determines the grant-funded service is exempt from the LWO, neither the Employer nor any of its Subcontractors working on the Agreement will be subject to the LWO.

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REGULATION #6: EMPLOYER REQUIREMENTS

All Employers, (including Subcontractors, sublessees, and sublicensees) who lease City property or perform work or provide services pursuant to an Agreement that is subject to the LWO must comply with all requirements of the LWO and its Rules and Regulations. For purposes of these Rules and Regulations, Subcontractors, sublessees, and sublicensees may be referred to collectively as “Subcontractors.”

(a) Subcontractors Subject to the LWO if the Agreement is Subject to the LWO

A Subcontractor performing work or providing services on an Agreement that is subject to the LWO is also subject to the LWO, unless the Subcontractor qualifies for an exemption stated in the LWO and these Rules and Regulations. A Subcontractor may be subject to the LWO even if the Prime Contractor has been granted an exemption from the LWO for a particular Agreement. A Prime Contractor is responsible for informing its Subcontractor of the Subcontractor’s obligation to comply with the LWO. Language obligating the Subcontractor to comply with the LWO shall be included in each subcontract between the Prime Contractor and the Subcontractor. Failure to comply shall be a material breach of the Agreement (LAAC Section 10.37.4(d)).

If the BCA determines that a Prime Contractor intentionally entered into separate Agreements to keep subcontracts below the 3 month duration or below the \$25,000 monetary threshold, the Prime Contractor will be in violation of the LWO. The BCA considers the accumulation of the amounts or terms of the separate subcontracts to determine the applicability of the LWO. The BCA shall inform the Awarding Authority that the Prime Contractor is not in compliance with the LWO and make recommendations pursuant to LAAC Section 10.37.6(g).

(b) Reporting Requirements: Employee and Subcontractor Information and Subcontractor’s Declaration of Compliance

Within 30 days of execution of an Agreement subject to the LWO, Employers shall complete and submit the appropriate reporting forms referred to in Appendix A which list all Subcontractors and Employees working on the Agreement.

Employers are also responsible for notifying all Subcontractors of their LWO obligation and compliance requirements. Employers must include in any contract with Subcontractors provisions wherein the Subcontractor agrees to comply with the LWO. The City, as a third part beneficiary for purposes of the LWO, has the right to enforce the LWO against Subcontractors. Employers will be subject to LAAC Section 10.37.6(g) if their Subcontractors fail to comply with the LWO.

(c) Notification: An Employer subject to the LWO shall notify each current Employee, and each new Employee at time of hire, of his or her rights under the provisions of the LWO by providing the Employee with a copy of the Notice to Employees referred to in Appendix A.

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An Employer subject to the LWO shall post in a prominent place in an area frequented by Employees a copy of the 1) Living Wage Poster and 2) the Notice Regarding Retaliation referred to in Appendix A. The Notice Regarding Retaliation must be posted by an Employer even if the Employer has been exempted from the LWO.

(d) Payrolls

The LWO requires Employers to retain payroll for a minimum of four years, unless more than four years of retention is specified elsewhere in the contract or required by law.

(e) LWO Requirement of Minimum Compensation

- (1) Employers subject to the LWO must pay covered Employees a “living wage” which shall be no less than the minimum compensation as defined in the LWO. If the Employer offers no health benefits, the Employer shall pay the Employee at least the full cash living wage rate. If health benefits are offered, the Employer must comply with Regulation #12.

Wage rates may be adjusted each year, effective July 1. If an Employer has an Agreement in place with the City and the living wage rates are adjusted during the life of the Agreement, the Employer shall adjust the wage rate paid to an Employee to comply with the new wage rate. In accordance to LAAC Section 10.37.2(a)(2) and 10.37.3(a)(5), the BCA shall provide notice of the new wage rate by publishing a bulletin announcing such wage adjustments.

Employers are not relieved of the obligation to adjust their wage rates because an individual notice was not received from the City. The Employer may contact the BCA to determine the wage rate adjustment, if any.

Wages do not include any amount paid to an Employee unrelated to the labor performed, such as allowances for parking, uniforms, meals, and contributions to retirement plans. If an Employee is paid by commission, it must be in accordance with State law and it must meet the required LWO hourly wage rate.

(f) Health benefits

Whether health benefits will be provided to Employees will be determined by the Employer. If the Employer elects not to provide health benefits, the full cash living wage rate must be paid to a covered Employee. If the Employer elects to provide a covered Employee with health benefits in accordance with these Rules and Regulations, proof of the provision of health benefits must be submitted to the BCA no later than 10 days after a request by the BCA for such documentation. If the documentation submitted does not allow the BCA to verify that health benefits are provided in accordance with the LWO and these Rules and Regulations, the Employer will be considered to be in violation of the LWO until sufficient documentation is received.

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(g) Compensated and Uncompensated Time Off

Unreasonably Deny: An Employer may not unreasonably deny an Employee's request to use accrued compensated or uncompensated time off. An Employee must notify the Employer in advance if the time off is planned, as may be the case with scheduled doctors' visits. If the need is unforeseeable, the Employee need only give notice as soon as practical, as may occur in the case of unanticipated illness or a medical emergency.

Adverse Action: The LWO protects the Employee for exercising the right to use compensated and uncompensated time off and prohibits retaliation in the form of discipline, discharge suspension or any other adverse action for use of compensated and uncompensated time off. However, this does not prevent an Employer from taking reasonable action (e.g. discipline) when an employee's use of paid time off is not in good faith, such as a clear instance or pattern of abuse.

Notification: An Employee must notify the Employer in advance if the compensated and uncompensated time off is planned, as may be the case with scheduled doctors' visits. If the need is unforeseeable, the Employee need only give notice as soon as practical, as may occur in the case of unanticipated illness or a medical emergency. In all cases, whether an employee can practicably provide notice depends upon the individual facts and circumstances of the situation.

Airport Employers: An Airport Employer can require a 4 hour notification period for absences. The Employer may reasonably consider consequences if clear instances of late notification or patterns of missed notification can be proven.

(1) Compensated Time Off

(A) Accrual and Usage: An Employee must accrue a minimum of 8 compensated hours off per month of full-time employment based on the Employee's regularly scheduled work hours. For example, a full-time Employee working a 40-hour work week must accrue compensated time-off at a rate of at least 8 hour per month. Accrual must begin the first day of employment so that by the end of one month, the Employee will have accrued no less than 8 hours off. A part-time Employee must accrue compensated days off in increments proportional to that accrued by a full-time Employee.

An Employee may determine how much compensated time off hours he or she needs to use, provided that an Employer may set a reasonable minimum increment for use, not to exceed two (2) hours.

An employee must be eligible to use accrued paid days off after the first 90 days of employment or consistent with company policy, whichever is sooner.

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- (B) Providing More than 12 Compensated Days Off Per Year: An Employer may choose to provide Employees with more compensated days off than is required under the LWO and these Rules and Regulations. The BCA, after considering the totality of the circumstances, may determine that the Employer's established policy is more generous than what the LWO requires and allow an Employer's established compensated time off policy to remain in place, even though it does not meet the accrual rate and eligibility requirement in the LWO. The BCA will take into consideration the following when making a determination:
- (i) An Employer's policy provides an Employee with more days off so long as the total number of days off is at least 22 days, and at least 12 of the days are compensated days off; or
 - (ii) If requiring the Employer to change its policy to comply with the LWO and these Rules and Regulations will result in the Employees receiving less benefits than provided under the Employer's established policy.
- (C) Carry Over of Compensated Time Off: Unused compensated days off accrued by an Employee working on an Agreement must be carried over and may be capped at a minimum of 192 hours. An Employer may set a higher cap or no cap at all. Pursuant to LAAC Section 10.37.2(b)(3)(v), an Employer shall provide a cash payment once every 30 days for accrued compensated time off over the maximum.
- (D) Cash Out of Accrued Compensated Time Off: If there is no carry over cap, an Employer is not required to provide a cash payment unless otherwise required by law.
- (2) **Uncompensated Time-Off**: At least 10 uncompensated days off shall be made available, as needed, for an Employee's illness or the illness of an immediate family member after an Employee has exhausted his or her compensated days off.
- (A) Accrual and Usage: An Employee must accrue a minimum of 6.67 uncompensated hours off per month of full-time employment based on the Employee's regularly scheduled work hours. For example, a full-time Employee working a 40-hour work week must accrue uncompensated time-off at a rate of at least 6.67 hour per month. Accrual must begin the first day of employment so by the end of one month, the Employee will have accrued no less than 6.67 hours off. A part-time Employee must accrue uncompensated days off in increments proportional to that accrued by a full-time employee.

An Employee must be eligible to use accrued uncompensated days off after the first 90 days of employment or consistent with company policy, whichever

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is sooner.

(B) Carry Over of Compensated Time Off: Unused uncompensated days off accrued by an employee working on an Agreement must be carried over and may be capped at a minimum of 80 hours. An Employer may set a higher cap or no cap at all.

(3) **Retroactive Time-Off**: An Employer who fails to provide covered Employees with time off in accordance with the requirements of the LWO and these Rules and Regulations shall provide the affected Employees with the time off retroactive to the effective date of the Agreement. An Employer required to provide Employees with time off retroactively shall:

(A) Calculate the amount of compensated time off that the Employee should have accrued under the LWO. The Employer must immediately make available all the accrued time off. If the accrued time off owed exceeds 192 hours, the Employer must pay the Employee the cash value of the compensated time-off for any amounts owed above 192 hours. The amount to be paid to the Employee for the retroactive compensated time-off shall be calculated based on the current wage rate.

(B) Calculate the amount of uncompensated time off that the Employee should have accrued under the LWO. The Employer shall add the additional amount of uncompensated time-off that the Employees should have earned to the uncompensated time-off already accrued by the Employee. If the Employer has established a cap for at least 80 hours or more of uncompensated time off, any additional time off owed does not need to exceed that cap.

(C) Prior to October 5, 2016, calculation of compensated and uncompensated time off will not include any cap or cash payments in accordance to the previous Rules and Regulations.

(h) Federal Earned Income Credit (EIC) – LAAC Section 10.37.4(b):

Upon commencement of work on a City Agreement subject to the LWO or a subcontract related to the City Agreement, the Employer shall inform all Employees working on that Agreement of their possible right to EIC. The Employer shall also make available to Employees the forms necessary to secure advance EIC payments from the Employer. The Employer shall provide Employees with forms in English, Spanish, and other languages spoken by a significant number of the Employees, to the extent that such forms are available from the Internal Revenue Service.

(i) City Access to Employer Records to Monitor Compliance with the LWO

An Employer subject to the LWO shall allow authorized City representatives access to work sites, upon request, in order to monitor compliance and investigate Employee complaints. An Employer shall submit, upon request, copies of payrolls, health benefit

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statements, and related documents to comply with the reporting requirements of the LWO, and to enable the BCA to fulfill its responsibilities as the Designated Administrative Agency. When necessary, the BCA may require the Employer to submit other documentation. Failure to submit documents or allow access to the work sites as requested will be deemed a violation of the LWO and these Rules and Regulations and may result in a recommendation to the Awarding Authority in accordance to LAAC Section 10.37.6(g).

(j) Disclosure of Documents and Information

Documents and information obtained in the course of the administration of the LWO become City records. Disclosure is subject to the provisions and limitations of the California Public Records Act (CPRA). Consistent with the CPRA, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.

(k) Prohibition Against Retaliation

Even if an Employer is exempt from the wage and benefits provisions of the LWO, the Employer is still subject to LAAC Section 10.37.5 of the LWO regarding prohibition against retaliation for activities related to the LWO.

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REGULATION #7: REPORTING AND RECORD KEEPING

(a) Providing Copies of Agreements to the BCA

The Awarding Authority shall transmit a copy of each executed Agreement and related documents to the BCA. Agreements exempt from the LWO shall be submitted to the BCA along with an approved exemption form.

(b) Annual Departmental Report

The BCA may require Awarding Authorities to submit a report listing all Agreements employing low-wage earners for the period from July 1 to June 30. This report should be submitted within 15 working days of June 30 of a given year.

(c) Annual LWO Wage Rate Adjustment

The BCA shall advise the Awarding Authority of any adjustments to the LWO wage rate. The BCA shall notify Employers by publishing on its website a bulletin announcing the adjusted wage rates, which shall take effect on July 1 of each year. The BCA may also notify by mail those Employers within its database known to be subject to the LWO. The BCA may also notify Employers of the adjusted living wage rates by publishing the rates in a local newspaper of general circulation

The Employer shall provide notification of the rate adjustments to each of its Employees by posting in its workplace the posters and notices as required by LAAC Section 10.37.4(a). The Employer shall also notify any Subcontractor performing work on the City Agreement of the adjusted wage rate. The Subcontractor shall also notify its Employees of the wage rate adjustment by posting in its workplace the posters and notices as required by LAAC Section 10.37.4(a).

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REGULATION #8: MONITORING AND INVESTIGATION

The provisions of these Rules and Regulations will augment the Awarding Authority's normal and customary procedure for administering its contracts. The BCA shall administer, monitor, and enforce the requirements of the LWO as follows:

(a) Review of Agreements

The BCA will be available to review all Agreements in cooperation with the Awarding Authority to ensure that relevant language and documents are included. The Awarding Authority shall incorporate the standard LWO contract language referred to in Appendix A into subject Agreements. If an Awarding Authority fails to include the required LWO language in an Agreement, the BCA may note that failure in its report to Council.

(b) Employer Monitoring

The BCA will monitor the operations of Employers to ensure compliance by conducting site visits and payroll audits. The BCA may review the provision of wages and benefits by an Employer as part of the site visits. An Employer shall cooperate with the BCA when a meeting, site visit, or documentation is requested by the BCA as part of its review. Cooperation includes providing the BCA with full access to the work site for Employer and Employee interviews, and copies of certified payrolls, timesheets, health and benefit statements, employee policy manuals, and any other document which would assist the BCA in determining if an Employer is complying with the LWO. Requests by the BCA for meetings, site visits, employee interviews, and documents shall be made with reasonable notice. The BCA shall notify the Awarding Authority of each site visit.

(c) Employer Review in Response to Specific Concerns or Complaints

The BCA will perform an investigation when there is a specific concern or complaint about an Employer. If an Employee alleges a violation of the LWO or retaliation by the Employer, the BCA shall initiate the investigation pursuant to Regulation #10.

(d) Employer's Failure to Cooperate

If an Employer fails to produce requested documentation, fails to allow access to the work site or the Employees for Employee interviews, or otherwise fails to cooperate with the BCA, the BCA may consider the Employer to be in violation of the LWO LAAC Section 10.37.6(d) and may result in a recommendation to the Awarding Authority in accordance with LAAC Section 10.37.6(g).

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REGULATION #9: ENFORCEMENT

(a) Notice to Employer of LWO Violations

If the BCA determines that the Employer has violated the LWO, the BCA will notify the Employer of the determination in a Notice to Correct and allow the Employer 10 working days to correct the violation. The BCA may, within its discretion, allow the Employer additional time beyond the 10 working days to make the corrections if the Employer demonstrates to the BCA that a good faith effort to comply has been made. The BCA shall notify the Awarding Authority of the Employer's failure to comply with the LWO and of the deadline by which corrections must be made. The BCA shall also notify a Prime Contractor of a Subcontractor's violation.

(b) Failure to Correct or Comply

Should the violation or failure to comply continue and/or no resolution is imminent, the BCA, in cooperation with the Awarding Authority, may pursue available remedies including: 1) the withholding of contract payments; 2) the impoundment of money; 3) termination of the contract as provided for in LAAC Section 10.37.6(g); 4) a declaration of non-responsibility from future City agreements, leases, licenses; and 5) any other remedy that may be available to the City.

(c) Prime Contractors Responsible for Subcontractor

Prime Contractors shall be responsible for ensuring that violations of the LWO by their Subcontractors, sublessees, or sublicensees are cured within the time stated in the BCA's Notice to Correct. If the Subcontractor, sublessee, or sublicensee fails or refuses to comply or to make corrections, the BCA may determine that the Prime Contractor has violated the LWO.

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REGULATION #10: EMPLOYEE COMPLAINT PROCESS

An Employee who alleges violation of any provision of the LWO by an Employer may report such acts to the BCA. The complaint to the BCA shall be handled as follows:

(a) Employee Complaints

An Employee making a complaint for a violation of the LWO must complete the complaint form referred to in Appendix A, which is available in English and Spanish.

(b) Complaints Alleging Retaliation

An Employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) under LAAC Section 10.37.5 of the LWO may report the alleged retaliation in the same manner as provided in Subsection (a).

(c) Investigation of Employee Complaints

Upon receipt of a written Employee complaint, if the BCA has determined the complaint is valid, the BCA will initiate an investigation. Upon conclusion of the investigation, the BCA shall notify the Employee of the determination. If the BCA determines that the Employer is in violation of the LWO, the BCA will proceed pursuant to Regulation #9.

(d) Confidentiality of Information During Investigation

Consistent with the CPRA, information and records obtained by the BCA in the course of its complaint investigations, including the identity of the complainants and any witnesses, will be considered confidential and exempt from public disclosure during the course of the investigation.

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REGULATION #11: RFP AND STANDARD LWO CONTRACT LANGUAGE

Unless otherwise provided for within these Regulations, all RFPs, RFBs, and City Agreements must incorporate the standard LWO contract language referred to in Appendix A, or the most recent “Standard Provisions for City Personal Services Contracts” so long as the Standard Provisions contain the LWO contract language referred to in Appendix A.

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REGULATION #12: HEALTH CARE BENEFIT COSTS

LWO § 10.37.2(a) gives Employers the option of paying Employees the living wage either fully in cash or largely in cash and partly by a health benefits payment of at least \$1.25 per hour and \$5.05 per hour (as of October 5, 2016) for Airport Employees (Airport Employees receive annual increases in rates pursuant to 10.37.3(a)). The intent of the LWO is to provide Employees with good benefits at no cost to the Employee.

Example:

Using the July 1, 2016 health benefit payments required, Employers will be allowed to provide health care benefits through medical plans costing less than \$1.25/\$5.05 per hour, so long as the unused health benefits amount is added to the Employee's hourly wage. For example, if the hourly rate with health benefits in effect is \$11.27 per hour, an Employer with a health plan costing \$1.00 per hour shall be required to increase the living wage rate from \$11.27 to \$11.52 per hour.

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REGULATION #13: INSTALLMENT PAYMENTS OF AMOUNT DUE TO EMPLOYEES

If corrective payments are required to be paid to Employees in order to cure a violation of the LWO, the Employer shall pay the entire amount due to each Employee in one payment within the time period required by the City in the Notice to Correct to the Employer. An Employer may pay an Employee the amount due in installments only when the Employee has agreed in writing to such a payment plan.

If an Employer obtains a written agreement from the Employee allowing the Employer to make corrective payments in installments, the agreement must indicate the amount due to the Employee, when such payments will be made, and the period of time over which payments will be made. Unless otherwise authorized by the City and agreed to by the Employee, all amounts due must be paid within six (6) months after the Notice to Correct was issued by the City.

The agreement must also provide that an Employee, who for any reason subsequently leaves the company's employment, shall be paid the remaining amount owed under the LWO immediately. Such agreements must be in language understandable to the Employee, and, if necessary, must be translated into the employee's primary language so that the Employee fully understands what the agreement entails. All such agreements must be submitted to the BCA to verify that the Employee has agreed to receive the corrective payments in installments.

If an Employee declines to execute such an agreement, the Employer must pay the entire amount due under the LWO to that Employee in one payment.

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REGULATION #14: INDUSTRY-SPECIFIC CLASSIFICATIONS

Pursuant to LAAC Section 10.37.1(l)(3)(iii) and 10.37.1(m)(3)(iii) Industry –Specific Classification is defined as any and all classifications working in a specific industry.

Past Determinations

All past determinations issued by the BCA or the DAA at that time, are valid and remain in effect for all Agreements and amendments to Agreements in effect prior to October 5, 2016. The determinations shall remain in effect until otherwise modified, corrected, or rescinded by the BCA.

REVISED 3-15-2017

The past determinations can be found at:

http://bca.lacity.org/index.cfm?nxt=lco&nxt_body=content_lwo.cfm

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APPENDIX A

The forms listed below have been approved by the BCA for use in conjunction with these LWO Rules and Regulations. Forms may be revised and updated as necessary in which case the updated forms must be used.

NO.	FORM NAME
LW-1	Departmental Guidance Form
LW-4	Pro-rated Time Off for Part-time Employees
LW-5	Subcontractor's Declaration of Compliance
LW-6	Employee Information Form
LW-10	Non-Coverage/Exemption Application
LW-11	Notice to Employees (flyer) (English)
LW-11sp	Notice to Employees (flyer) (Spanish)
LW-12	Standard RFP/Contract Language
LW-13	Departmental Exemption Application
LW-18	Subcontractor Information Form
LW-26a	Application for "Small Business Exemption" (English/Spanish)
LW-26b	Employee Worksheet for "Small Business Exemption" (English/Spanish)
LW-27	Benefits Waiver Application