

LIVING WAGE LAW
RULES & REGULATIONS

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Living Wage Unit
Suffolk County Department of Labor

LIVING WAGE LAW RULES & REGULATIONS

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B. LEGISLATIVE INTENT

1. This Legislature hereby finds and determines that the County of Suffolk provides grants, loans, tax incentives, contracts and other forms of assistance to businesses that result in the creation or maintenance of a wide variety of employment opportunities.
2. This Legislature further finds and determines that Suffolk County has a limited amount of taxpayer resources to expend, which must be spent wisely.
3. This Legislature also finds and determines that, even in the current booming economy, far too many working Suffolk County residents and their families live below or near the poverty line.
4. This Legislature hereby determines that employees of Suffolk County government currently receive a wage and benefit package that meets the “living wage” requirements contemplated by this Chapter.
5. This Legislature finds that the use of taxpayer dollars to promote sustenance and the creation of “living wage” jobs will increase consumer income, decrease levels of poverty, reinvigorate neighborhood businesses and reduce the need for taxpayer funded social programs.
6. This Legislature finds that the disclosure provisions contained in Resolution No. 232-2000 for County purchases of textile or apparel goods represents a first step on the road to a county-wide policy of living wages.
7. Therefore, the purpose of this Law is to ensure that employees of County contractors and subcontractors and beneficiaries of tax, loan, grant and other subsidy assistance provided by the County earn an hourly wage that is sufficient for a family of four to live at or above the federal poverty level.

C. DEFINITIONS

AWARDING AGENCY:

Administrative Awarding Agency

The subordinate or component entity, person or County department that is responsible for solicitation of proposals or bids.

Managing Agency

The subordinate or component entity, person or County department that is responsible for the initiation, administration and oversight of service contracts or financial compensation agreements.

AMOUNT OF WAGE:

The living wage shall be calculated on an hourly basis and shall be no less than \$10.02 per hour worked with health benefits, as described in this chapter, or otherwise \$11.41 per hour. Beginning on January 1, 2006, the living wage for employees of child care providers shall be calculated on an hourly basis and shall be no less than \$9.25 per hour worked with health benefits or otherwise \$10.50. The living wage shall be adjusted upwardly only, if applicable, each year no later than April 1 in proportion to the increase, if any, immediately preceding December 31 over the year earlier level of the area Consumer Price Index as published by the United States Department of Commerce, Bureau of Economic Analysis. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors and/or tenants, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1.

APPLICABILITY:

Covered employers shall pay no less than a living wage to their covered employees who actually perform work or render services on or for a project, matter, contract or subcontract for which the recipient has received compensation; provided that in the case of employees performing non-construction work that is covered by state or local prevailing wage laws. Covered employers shall pay the greater of a living wage or said prevailing wage for non-construction work.

COMPENSATION:

1. Any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of compensation of more than \$50,000 which is realized by or provided to an employer of at least ten (10) employees by or through the authority or approval of the County of Suffolk. For purposes of a not-for-profit organization specifically seeking bond financing within the County of Suffolk, the threshold requirement of Fifty Thousand dollars (\$50,000.00) shall be measured by the amount of the benefit conferred to the applicant resulting in a net loss incurred by the County of Suffolk and without regard to the amount of the bond financing.
2. Any service contract or subcontract let to a contractor with ten (10) or more employees by the County of Suffolk for the furnishing of services to or for the County of Suffolk (except contracts where services are incidental to the delivery of products, equipment or commodities) which involves an expenditure equal to or greater than \$10,000. For the purposes of this definition, the amount of expenditure for more than one contract for the same service within one calendar year shall be aggregated. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not “compensation” for the purposes of this definition.

RECIPIENT:

Any person or entity that is a recipient of compensation, as defined in this chapter; and

1. Any tenant or leaseholder of a recipient that employs at least ten (10) persons and occupies property or uses equipment or property that is improved or developed as a result of compensation; and
2. Any contractor or subcontractor of a recipient that employs at least ten (10) persons in producing or providing goods or services to a recipient that are used by that recipient in the project or matter for which the recipient has received compensation.

COMPENSATED DAYS OFF:

Employers shall provide at least twelve (12) days off per year for sick leave, vacation or personal necessity at the employee’s request. Employees shall accrue one compensated day off per month of full-time employment. Part-time employees, who work twenty (20) or more hours per week, shall accrue compensated days off in increments proportional to that accrued by full-time employees. Part-time employees earning 200% of the living wage rate may be

exempted from receiving compensated time off. The employees shall be eligible to use accrued days off after the first six (6) months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off.

COUNTY:

The County of Suffolk, any agency, office, position, administration, department, division, bureau, board, commission, corporation, public authority or unit of government, the expenses of which are paid in whole or in part by the County, or over which majority control is exercised by officers of the County or of a County affiliated agency or their appointees.

COVERED EMPLOYEE:

A person employed on either a full, part-time or temporary basis, by a covered employer, to perform work on or for the project or matter for which the recipient has received compensation; provided, however, that persons who are employed in construction work covered pursuant to federal, state or local prevailing wage laws shall be exempt from this Chapter.

COVERED EMPLOYER:

A recipient of, or an applicant for, compensation that has not been granted an exemption from this Chapter and who has at least one covered employee working within the County of Suffolk or the County of Nassau.

HEALTH BENEFITS:

Health benefits required by this Chapter shall consist of the payment of at least \$1.25 per hour towards the provision of health-care benefits for covered employees and their dependents. Health benefits shall cover essential health needs including but not limited to physician services and inpatient and outpatient hospital services. Proof of the provision of such benefits must be submitted to the agency not later than thirty (30) days after execution of the contract to qualify for the wage rate in § 347-3 for covered employees with health benefits. Any employee elected/needed benefit (health care and non-health care options) shall be considered as an eligible item for the purpose of calculating the \$1.25 per hour

benefit mandated if offered through a cafeteria-like plan, as long as the benefit is not mandated by State or Federal law.

LIVING WAGE:

Shall have the meaning stated in § 347-3 of Local Law No. 12-2001.

MANAGING AGENCY:

See above.

PERSON:

One or more of the following or their agents, employees, representatives and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and all other entities recognized at law by this County.

SEASONAL EMPLOYEE:

An employee hired temporarily for a period not to exceed ninety (90) consecutive days at any given time within a six-month (6) period.

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PART II

**CONTRACT APPLICATION
& REVIEW PROCESS**

SECTION A: SUMMARY

**SECTION B: APPLICATION SUBMITTAL &
REVIEW**

SECTION C: FORMS

PART II

CONTRACT APPLICATION AND REVIEW PROCESS

A. SUMMARY

This PART outlines the procedures to be followed when reviewing contracts for County compensation to ensure compliance with the provisions of the *Living Wage Law*. The parameters for this PART are as defined in the Suffolk County Code, Chapter 347 (subparagraphs 3, 5, 6, 7 & 9), Local Law No.12-2001. Contracts for County compensation as defined in this Local Law will be reviewed for compliance according to procedures delineated in Section B of this Regulation.

NOTE: Applicants requesting an exemption to the requirements of the *Living Wage Law* may submit more than one proposal or bid; one based on an approved exemption and one based on a disapproved exemption.

B. APPLICATION SUBMITTAL AND REVIEW

1. The Applicant for County Compensation (employer) is responsible for:

- a. Submitting a **Notice of Application for County Compensation & a Living Wage Certification/Declaration – Subject to Audit** form to the Suffolk County Clerk at least twenty-one (21) days before the awarding of any covered County compensation, or agreement to provide compensation.

NOTE: While submission of the above document is the legal responsibility of the applicant for compensation, the Awarding Agency may choose to submit the required forms for the applicant chosen for the award.

- b. Including in the **Notice of Application for County Compensation & Certification/Declaration-Subject to Audit** form the specific information concerning the award required by Chapter 347-3 G

PART II: CONTRACT APPLICATION AND REVIEW PROCESS

1. the name, address and phone number of both the prospective recipient and, if different, the specific project for which the compensation is sought;
2. the amount and origin of compensation sought (e.g., State or County compensation program or contracting department);
3. a brief description of the project or service for which the compensation is sought;
4. a statement of projected employment needs, by job classification, under the prospective compensation, including calculation of estimated net increase or decrease in jobs as a result of compensation;
5. a statement of projected wage levels of all covered employees in each of the years for which compensation is sought;
6. a written commitment to pay all covered employees a living wage, as defined by Chapter 347.

Furnishing written notification to each current and new covered employee, at the time of hire, of his or her rights to receive benefits under the provision of the *Living Wage Law* which shall include the following information:

1. That the minimum compensation and health benefits including the requirement that the rates of \$10.02 per hr. with health benefits and \$11.41 per hour without health benefits, will be adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Consumer Price Index, as published by the United States Dept. of Commerce, Bureau of Economic Analysis. These rates will be adjusted upwardly only.
2. That proof of the provision of qualified health benefits to their employees shall be submitted to the County no later than thirty (30) days after execution of the contract to qualify for the wage rate in Chapter 347-3.
3. That health benefits shall be provided to part-time employees as well as full-time employees.
4. That the employer shall be required to file a **Certification/Declaration-Subject to Audit** form as part of the contract with the County Clerk

PART II: CONTRACT APPLICATION AND REVIEW PROCESS

and that the County Clerk will make said certification available for public inspection and copying during regular business hours.

- d. Posting a copy of the notification described in #3 above prominently in communal areas at the worksite(s).
- e. Forwarding a copy of said notification to the Administrative Awarding Agency.
- f. Requiring subcontractors to comply with the provisions of the *Living Wage Law* for as long as the covered employer is in receipt of compensation and requiring tenants/leaseholders to comply with the provisions of this Law for as long as they use and occupy a premises or lease equipment or property that is in receipt of compensation.
- g. Ensuring that the language indicating the subcontractor's or tenant's/leaseholder's agreement to comply with the *Living Wage Law* shall be included in any contract or agreement between a covered employer and their contractors, subcontractors, tenants or leaseholders.
- h. Requiring subcontractors and/or tenants to comply with the Consumer Price Index upward adjustments, and to provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1.
- i. Transmitting a copy of such subcontract or other such agreements to the Administrative Awarding Agency.
- j. Informing covered employees making less than \$12 per hour of their possible right to the Federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and making available to employees forms informing them of the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and any other languages spoken by a significant number of the employees within thirty (30) days of employment under the terms of this section, and as required by the Internal Revenue Code.
- k. Filing any appeal relative to non-compliance within seven (7) calendar days after the date of notice (See PART IV of these Rules & Regulations).

Note: A contract shall not be executed with this employer until there is a resolution of the relevant appeal.

PART II: CONTRACT APPLICATION AND REVIEW PROCESS

2. The Administrative Awarding Agency is responsible for:

- a. Including the specified language in all advertisements, RFPs and RFQs as required by Chapter 347-6 of Local Law No. 12-2001 informing applicants that they must file a **Living Wage Certification/Declaration – Subject to Audit** form.
- b. Including all mandated application package forms in all RFPs, RFQs and bid packages for those applicants that they have determined as covered by the *Living Wage* Law.
- c. Reviewing the application for completeness.
- d. Informing the applicant or covered employer when application package is not acceptable (**Notice of Incomplete Submission**).
- e. Transmitting any original **Notice of Application for County Compensation** form(s) it receives from the applicant to the Office of the County Clerk or requesting applicant to do so.
- f. Transmitting a copy of the complete application package including subcontractor agreements to the *Living Wage* Unit of the Suffolk County Department of Labor (SCDOL).
- g. Informing applicant or covered employer of Local Law No. 12-2001 applicability (**Notice of Coverage by Living Wage Rules**).
- h. Receiving from the covered employer copies of health benefit certifications no later than 30 days after the execution of the contract and forwarding copies of these documents to the Living Wage Unit.
- i. Receiving from the covered employer copies of subcontractor agreements and employee notifications, and forwarding copies of these documents to the Living Wage Unit.
- j. Informing applicant/covered employer of the appeals process.
- k. Securing from successful applicants or bidders who claim they are **not** covered by the *Living Wage* Law a certification as to why the Law does not apply (**Living Wage Certification/Declaration-Subject to Audit**).

PART II: CONTRACT APPLICATION AND REVIEW PROCESS

1. Forwarding a copy of said certification to the *Living Wage* Unit.
3. **The *Living Wage* Unit is responsible for :**
 - a. Receiving copies of complete application packages including the **Notice of Application for County Compensation & Certification/Declaration-Subject to Audit** from the Administrative Awarding Agency.
 - b. Receiving from the Awarding Agency copies of health benefit certifications, subcontractor agreements and employee notifications received from covered employers.
 - c. Reviewing each application package for compliance with the regulations of the *Living Wage* Law and issuing a **Notice of Applicability of *Living Wage* Law** to the Administrative Awarding Agency.
 - d. Notifying the Administrative Awarding Agency of an incomplete submittal.
 - e. Maintaining on file all application packages and correspondence.
 - f. Compiling and reporting results of these reviews.
 - g. Making available to the public upon request a copy of a covered employer's **Certification/Declaration-Subject to Audit** .
 - h. Filing a covered employer's subcontractor agreements so that they are available for public review.
 - i. Maintaining a file of all certifications from employers who claim that they are not subject to the provisions of the *Living Wage* Law.
4. **The Suffolk County Clerk is responsible for:**
 - a. Receiving original **Notice of Application for County Compensation & Certification/Declaration-Subject to Audit** forms from covered employers.
 - b. Filing such **Notices** so that they are available for public review.

C. FORMS

Notice of Application for County Compensation (LW-1)

Certification/Declaration –Subject to Audit (LW-38)

Notice of Coverage by *Living Wage Rules* (LW-7)

Notice of Incomplete Submission (LW-6)

Notice of Applicability of *Living Wage Law* (LW-13)

**LIVING WAGE LAW
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PART III

EXEMPTION PROCESS

SECTION A: SUMMARY

**SECTION B: EXEMPTION SUBMITTAL &
REVIEW**

SECTION C: FORMS

PART III

EXEMPTION PROCESS

A. SUMMARY

This PART delineates the procedure for examining requests for exemption from the requirements of the *Living Wage* Law, and the granting or denying of these exemptions. The parameters for both inclusion under, and exemption from, these requirements are presented in the Suffolk County Code, Chapter 347 (subparagraph 13), as adopted in Local Law No. 12-2001.

NOTE: Applicants requesting an exemption to the requirements of the *Living Wage* Law may submit more than one proposal or bid: one based on an approved exemption and one based on a disapproved exemption.

A “General” exemption may be granted where application of this Chapter to a particular form of compensation is found by the County to violate specific State or federal statutory, regulatory or constitutional provision or provisions.

“Specific” exemptions, other than the “General” exemption cited above include:

1. Summer Youth or School-to-Work Programs (under 21 years of age).
2. Circumstances as outlined in Chapter 347-13 A (3) a, b, c.
3. Seasonal employees.

All exemptions to these requirements will be granted in accordance with procedures outlined in Section B of this PART.

B. EXEMPTION SUBMITTAL & REVIEW PROCESS

1. The Applicant is responsible for:

- a. Completion of the appropriate **Request for Exemption – *Living Wage*** form and forwarding to the Administrative Awarding Agency with all supporting documentation as outlined in Chapter 347-13 of Local Law 12-2001.

PART III: EXEMPTION PROCESS

General Exemption form attachments:

1. A legible and complete copy of the cited conflicting statutory, regulatory or constitutional provision(s) that make compliance with the Chapter unlawful.
2. Factual explication & legal analysis of how compliance with *Living Wage* Law would violate the cited provision(s), and the legal consequences that would attach if this violation were to occur.
3. A legible and complete copy of the statutory or regulatory authority granting the particular type of compensation being sought.

Specific Exemption form attachments:

1. **Summer Youth or School-to-Work Programs:** documentation from particular school(s) or youth organization(s) from which the employer has hired these youths. This documentation shall include the names and social security numbers of the youths.
 2. **Seasonal Employees:** specific employees are seasonal employees as defined in Chapter 347-2 and therefore eligible for an exemption.
 3. **Highest Wage/Lowest Wage Ratio Circumstance:** documentation that includes proof that the highest paid employee or owners of the corporation earn a salary which, when calculated on an hourly basis, is less than six (6) times the lowest wage or salary paid by the corporation.
 4. **Hardship** documentation that proves that the fulfilling of the requirements of the *Living Wage* Law will present a hardship because it will directly increase the expected total annual budget of the applicant in an amount greater than 10% of the prior year's adopted budget.
- a. Providing the Living Wage Unit with any supplemental documents or information required to investigate the claim for exemption.

PART III: EXEMPTION PROCESS

- b. Complying with the decision from the *Living Wage* Unit.

2. The Administrative Awarding Agency is responsible for:

- a. Informing all applicants and covered employers of the procedures for applying for exemptions from the *Living Wage* Law.
- b. Receiving all requests for exemption from applicants or covered employers and forwarding these requests to the *Living Wage* Unit.
- c. Providing the *Living Wage* Unit with any additional information as required to investigate the claim for exemption.
- d. Receiving the determination on each **Request for Exemption** from the *Living Wage* Unit and applying such determination to the applicant or covered employer.

3. The *Living Wage* Unit is responsible for:

- a. Receiving all **Request for Exemption** form(s) from applicants or covered employers from the Administrative Awarding or Managing Agency.
- b. Examining and evaluating all requests for exemption under the Law.
- c. Requesting further documentation, where warranted, from the applicant, covered employer or the Administrative Awarding or Managing Agency.
- d. Transmitting to the Office of the County Attorney all exemption requests that require legal opinions due to conflict between the *Living Wage* Law provisions and other statutory requirements.
- e. Receiving from the County Attorney all decisions regarding the conflict between the *Living Wage* Law provisions and other statutes.
- f. Notifying applicant/covered employer and the Administrative Awarding and/or Managing Agency of the decision regarding exemption requests.
- g. Notifying applicants or covered employers of the appeals process when a decision to grant an exemption is denied.
- h. Maintaining on file all **Request for Exemption** form(s) and related documents and correspondence.

PART III: EXEMPTION PROCESS

- i. Compiling and recording results of these applications.
- 4. The Office of the County Attorney is responsible for:**
- a. Receiving from the *Living Wage* Unit all **Request for Exemption** form(s) and documentation that list a conflict with another legal requirement as the reason for an exemption request.
 - b. Examining and evaluating all such requests.
 - c. Rendering a decision on the exemption request.
 - d. Transmitting such decision in writing to the *Living Wage* Unit.

C. FORMS

- Request for Specific Exemption (LW-5)**
- Request for General Exemption (LW-4)**
- Grant of Exemption (LW-10)**
- Denial of Exemption (LW-11)**

LIVING WAGE LAW RULES & REGULATIONS

PART IV

APPEALS PROCESS

SECTION A: SUMMARY

**SECTION B: CIRCUMSTANCES GOVERNING
 APPEALS**

SECTION C : FORMS

PART IV

APPEALS PROCESS

A. SUMMARY

This PART describes procedures for a bidder/proposers (applicants/covered employers) who have been deemed non-compliant during the application process or who, after being awarded a contract or bid, disputes the determination of applicability of the *Living Wage* Law to its business operation. The parameters for examining compliance, notifying applicants/covered employers and their rights to appeal are presented herein, in PART II, PART V to follow, and in the Suffolk County Code, Chapter 347 (subparagraph 5, 9 & 10) of Local Law #12-2001. All notifications and appeals will be administered in accordance with procedures outlined in Section B of this PART. Also described are procedures for a covered employee to appeal a decision made after the *Living Wage* Unit reviews a complaint.

B. CIRCUMSTANCES GOVERNING APPEALS

1. APPEALS FROM BIDDERS/PROPOSERS

a. The Administrative Awarding Agency is responsible for:

1. Providing written notification to the applicant who has submitted an application package that the documentation is incomplete and what is needed in order to be in compliance. (**Notice of Incomplete Submission**).
2. Notifying the applicant of the appeals process. (**Notice of Appeal**).
3. Notifying the *Living Wage* Unit of non-compliance.

NOTE: No contract shall be executed with this employer until there is a resolution of any pending appeal.

b. The Bidder/Proposer may:

1. File a **Notice of Appeal** with the *Living Wage* Unit within seven (7) calendar days after the date of the notice from the Administrative Awarding Agency informing the employer of non-compliance (**Notice of Incomplete Submission**).

NOTE: Failure to file a Notice of Appeal required within seven (7) days will be deemed non-compliant and the bid/proposal will be withdrawn.

PART IV: APPEALS PROCESS

2. Submit any additional documentation to support their case.

c. **The *Living Wage* Unit is responsible for:**

1. Receiving appeals from proposers or applicants within seven (7) calendar days of the date of the written notification of non-compliance.
2. Conducting a complete review of the initial determination of non-compliance with the Local Law 12-2001, any documentation that might be included by the employer seeking the appeal and any other ancillary evidence and statutes necessary to determine compliance with the Law.
3. Seeking counsel from the County Attorney's Office, when warranted.
4. Rendering a decision.
5. Sending the decision via certified/return receipt U.S. Mail to the proposer or applicant.
6. Maintaining records of all notices of non-compliance, appeals and decision documentation.

2. APPEALS FROM COVERED EMPLOYERS

a. **The Covered Employer may:**

1. File a **Notice of Appeal** to the *Living Wage* Unit within seven (7) calendar days after the date of non-compliance notification (**Determination of Non-compliance**) or the date of the notice of coverage (**Notice of Applicability**).
2. Submit with the appeal any documentation to support the case.

b. **The *Living Wage* Unit is responsible for:**

1. Receiving appeals from covered employers within seven (7) calendar days after the date of non-compliance notice.

PART IV: APPEALS PROCESS

2. Conducting a complete review of the initial determination of non-compliance, any documentation that might be included by the employer seeking appeal and any other ancillary evidence necessary to determine compliance with the Law.
3. Attempting resolution within thirty (30) days when the specific concern or complaint involves the employment practices of a covered employer relative to the *Living Wage* Law.
4. Forwarding all materials to the SCDOL Hearing Officer for review and investigation, where applicable.
5. Maintaining records of all notices, appeals and decision documentation.

c. The SCDOL Hearing Officer is responsible for:

1. Conducting a complete review of the determination of non-compliance in order to render an opinion.
2. Rendering a decision.
3. Sending the decision via certified/return receipt U.S. Mail to the proposer or applicant.
4. Pursuing all available legal remedies in the event that the violation continues and/or no resolution is imminent (see PART V of these Rules).

3. APPEALS FROM COVERED EMPLOYEES

a. The Covered Employees may:

1. File an appeal if necessary and appropriate.
2. Review the decision of the *Living Wage* Unit regarding any complaint filed against a covered employer, as described in PART V (B 1).
3. May file an appeal of that decision with the *Living Wage* Unit.
4. Must cooperate with the investigation of the designated SCDOL Hearing Officer, and the hearing process.

PART IV: APPEALS PROCESS

b. The *Living Wage* Unit is responsible for:

1. Rendering a decision on all complaints filed from covered employees.
2. Sending the decision via certified/return receipt U.S. Mail to the covered employee, the covered employer, and where applicable, the Managing and/or Administrative Awarding Agency.
3. Advising covered employees of the process for filing an appeal of such decisions.
4. Receiving an appeal of any complaint decision from the covered employees.
5. Transmitting to the designated SCDOL Hearing Officer the covered employee's appeal form, along with relevant documentation from the original complaint and investigation.
6. Receiving the decision from the Hearing Officer.
7. Conveying such decisions to the covered employee, the covered employer and, where applicable, the Managing and/or Administrative Awarding Agency.
8. Maintaining records of all notices, appeals and decision documentation.

c. The SCDOL Hearing Officer is responsible for:

1. Conducting a complete review of the determination of non-compliance in order to render an opinion.
2. Rendering a decision.
3. Conveying the resulting decision to the *Living Wage* Unit.

C. FORMS

Notice of Incomplete Submission (LW-6)

Notice of Appeal (LW-9)

Determination of Non-Compliance with *Living Wage* Regulations (LW-12)

Notice of Applicability (LW-13)

**LIVING WAGE LAW
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PART V

**MONITORING &
INVESTIGATIONS PROCESS**

SECTION A: SUMMARY

**SECTION B: INVESTIGATION OF COVERED
EMPLOYEE COMPLAINTS**

**SECTION C: FIELD MONITORING FOR
COMPLIANCE**

SECTION D: FORMS

PART V

MONITORING & INVESTIGATIONS PROCESS

A. SUMMARY

This PART delineates the procedure for investigating complaints from employees concerning violations of requirements of the *Living Wage Law*, and the application of remedies under the Law. This PART also covers the process to be followed when violations are discovered during reviews and investigations of the covered employer. The parameters for investigating complaints, resolving violations and pursuing remedies are presented in the Suffolk County Code, Chapter 347 (subparagraphs 7, 8, 9 & 10), Local Law No. 12-2001. All complaints and violations concerning these provisions will be administered in accordance with procedures outlined in Section B and Section C of this PART.

This PART is divided into the following sections:

- B. Investigating Covered Employee Complaints
- C. Field Monitoring Compliance with the *Living Wage Law*

B. INVESTIGATING COVERED EMPLOYEE COMPLAINTS

Note: An employee who alleges violation of any provision of this Chapter may report such acts to the County and at the employee's discretion, exhaust available employer internal remedies.

1. **If filing a complaint, the Covered Employee is responsible for:**
 - a. Submitting to the *Living Wage Unit* of the SCDOL a completed and signed complaint form (**Covered Employee Complaint Form**).
 - b. Submitting copies of all documents supporting the complaint, if necessary.
 - c. Participating in a meeting, if necessary, to attempt to resolve the complaint.
 - d. Appealing the decision of the *Living Wage Unit*, if necessary and appropriate, to the designated SCDOL Hearing Officer, as outlined in PART IV.

PART V: MONITORING & INVESTIGATIONS PROCESS

- e. Providing any further documentation requested by the *Living Wage* Unit or SCDOE designated Hearing Officer.

Note: A complaint form may be obtained from the *Living Wage* Unit or from the Suffolk County website at www.co.suffolk.ny.us/labor. If this form is not used, the written complaint must contain, at a minimum:

- **The name, address, job title and telephone number of the complainant.**
- **The name and address of the covered employer.**
- **The address where complainant works if different from address of covered employer.**
- **The name and job title of complainant's immediate supervisor.**
- **The nature of the complaint and relief requested.**

Note: An employee claiming retaliation (such as termination, reduction in wages or benefits or adverse changes in working conditions) for alleging non-compliance with the Law may report the retaliation in the same manner as the initial complaint.

2. The *Living Wage* Unit is responsible for:

- a. Ensuring that all complaints are in writing, signed by the complainant, logged and filed.
- b. Notifying the Administrative Awarding Agency, Managing Agency and the covered employer of the complaint, and attempting to resolve these complaints within five (5) days of receipt of the written complaint form.
- c. Initiating an investigation, including a monitoring visit, if necessary.
- d. Advising the covered employer, Administrative Awarding Agency and Managing Agency of results of the investigation and, if noncompliance with the Law is found, advising the covered employer of specific time frames in which corrective action must be taken.

PART V: MONITORING & INVESTIGATIONS PROCESS

- e. Advising covered employer and covered employee of the appeals process (**Notice of Appeal**).
- f. Referring complaint to the Hearing Officer, if warranted.
- g. Referring complaint to the Office of the County Attorney for appropriate legal action, if the violation continues and/or no resolution is imminent.
- h. Maintaining all records of complaints, investigations, and decisions.

3. The SCDOL Hearing Officer is responsible for:

- a. Initiating a complete review and investigation of any complaints forwarded by the *Living Wage* Unit where an employee is claiming retaliation from a covered employer for alleging non-compliance with the *Living Wage* Law.
- b. Conducting both informal and formal meetings or hearings in order to resolve the complaints.
- c. Referring complaints to the Office of the County Attorney, for appropriate legal action, in the event that a covered employer is found to have violated the *Living Wage* Law and/or no resolution is imminent.

4. The Managing Agency is responsible for:

- a. Assisting, if necessary, the *Living Wage* Unit, SCDOL Hearing Officer, and County Attorney in investigating complaints.

5. The Covered Employer is responsible for:

- a. Cooperating with all investigations.
- b. Permitting access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with this Law, investigating employee complaints of non-compliance and evaluating the operation and effects of this Chapter. This includes the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five (5) years, whichever period of compliance is applicable.

PART V: MONITORING & INVESTIGATIONS PROCESS

- c. Complying with the notice and decision regarding investigation of complaints, taking corrective action as needed, and adhering to the time frame given by the *Living Wage* Unit.

Note: Covered employers shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint to the County, participating in any of its proceedings, using any civil remedies to enforce his or her rights or otherwise asserting his or her rights under the *Living Wage* Law. Covered employers shall also be in compliance with federal law proscribing retaliation for union organizing.

6. The County Attorney is responsible for:

- a. Promulgating procedures for legal enforcement of the requirements of the *Living Wage* Law.
- b. Pursuing all available legal remedies.

C. FIELD MONITORING FOR COMPLIANCE WITH THE *LIVING WAGE* LAW

1. The *Living Wage* Unit is responsible for:

- a. Visiting covered employer's site(s) to review payroll, benefits, and public notices and to interview covered employees, as applicable.
- b. Notifying covered employer, Administrative Awarding Agency and/or Managing Agency of any found violations. Compliance must take place within thirty (30) days of notification.
- c. Advising covered employer of appeals process. See Part IV - Appeals Process
- d. Maintaining on file all reviews and correspondence.
- e. Compiling and reporting results of these reviews.

2. The Covered Employer is responsible for:

PART V: MONITORING & INVESTIGATIONS PROCESS

- a. Complying with all requirements of the *Living Wage* Law as outlined in Suffolk County's Local Law 12-2001. Included are the following provisions:
 1. Nothing in the Law shall be construed to require or authorize any recipient to reduce wages established by a collective bargaining agreement or required under any prevailing wage law. Nothing in this law, however, shall be construed to increase or affect the wages, paid time-off entitlement, or benefits established in a collective bargaining agreement with regard to those employees of a Recipient or Covered Employer during any period of time that an employee is not actually performing applicable work as defined in the law.
 2. No recipient shall fund wage increases required by the Local Law 12-2001 or otherwise respond to the provisions of this Law by reducing the health insurance, pension, vacation or other non-wage benefits of any of its employees.
- b. Recording on the Payroll Record for *Living Wage* Compliance (LW-32) data required by the law, including: the number of hours worked each day, gross wages, deductions made, net wages, and a record of health benefits payments and compensated days off for each covered employee.
- c. Maintaining required payroll and benefits records for a period of three (3) years.
- d. Producing for inspection and copying payroll records for any or all of its employees for the prior three-year (3) period.
- e. Permitting access to work sites by authorized representatives for the purpose of monitoring compliance, investigating employee complaints and evaluating the operation and effects of the *Living Wage* Law, for the term of the contract or for five (5) years, whichever period of compliance is applicable.
- f. Correcting any violations found within the timeframes established by the *Living Wage* Unit.
- g. Filing any appeals as outlined in Part IV – Appeals Process.
- h. Complying with the decisions of the *Living Wage* Unit or in the event of an appeal, the designated Hearing Officer.

3. The Managing Agency is responsible for:

- a. Submitting such reports and records to the SCDOL *Living Wage* Unit as may assist them in reviewing and evaluating covered employers receiving County compensation.
- b. Correcting vendor violations as reported by the Living Wage Unit within recommended time frame
- c. Taking appropriate action when violations persist as outlined in §347-9 concerning legal remedies including written notification to the County Attorney.

4. The County Attorney is responsible for:

- a. Promulgating procedures for legal enforcement of the requirements of the Living Wage Law.
- b. Pursuing all available legal remedies.

D. FORMS

Covered Employee Complaint Form (LW-8)

Notice of Appeal (LW-9)

Payroll Record for Living Wage Compliance (LW-32)

RULES & REGULATIONS

PART VI

RECORD KEEPING & REPORTS

SECTION A: SUMMARY

**SECTION B: ANNUAL COUNTY
COMPENSATION REPORTS**

**SECTION C: COVERED EMPLOYER
PAYROLL RECORDS**

**SECTION D: ANNUAL
CONTRACT/COMPLIANCE
STATUS REPORTS**

SECTION E: SPECIAL REPORTS

SECTION F: FORMS

PART VI

RECORD KEEPING & REPORTS PROCESS

A. SUMMARY

This PART delineates the procedure for reviewing and generating documents and reports required by the *Living Wage* Law. The parameters for these reports are presented in the Suffolk County Code, Chapter 347 (subparagraphs 3, 4, 5 & 7), Local Law No. 12-2001. All reports will be reviewed, produced, distributed and maintained in accordance with procedures outlined in Section B – F of this PART.

This PART is divided into the following sections:

- © Annual County Compensation Reports
- © Covered Employer Payroll Record
- © Annual Contract/Compliance Status Reports
- © Special Reports
- © Forms

B. ANNUAL COUNTY COMPENSATION REPORTS

1. The Managing Agency is responsible for:

- a. Compiling a report (**County Compensation Report**) for each compensation package or contract approved by or through the authority of the Suffolk County Department of Labor during the preceding calendar year that includes:
 1. The name of the Managing Agency, the name of the specific program under which the compensation was awarded and the origin of funds for compensation.

PART VI: RECORD KEEPING & REPORTS PROCESS

2. A calculation of the total cost to the County of compensation provided to each recipient, including both face value of compensation as well as revenue not collected by the County as a result of the compensation.
 3. A description of the purpose of the project for which compensation is awarded.
 4. An accounting of the total number of jobs created per each project for which compensation was given; and
 5. An accounting of the average wage paid on all jobs created by compensation granted by the Managing Agency during the year.
- b. Filing said report with the *Living Wage* Unit of the SCDOL no later than thirty (30) days following the end of each calendar year.

2. The Applicant or Covered Employer is responsible for:

- a. Submitting such information to the Managing Agency as is necessary to complete an **Annual County Compensation Report**.
- b. Submitting any required information in a timeframe established by the Managing Agency.

3. The *Living Wage* Unit is responsible for:

- a. Monitoring each report for compliance with the requirements of the *Living Wage* Law.
- b. Maintaining on file all reports and correspondence.
- c. Compiling and reporting results of these reviews.
- d. Notifying the Managing Agency that an individual County Compensation Report is incomplete or does not comply with the *Living Wage* Law.

C. COVERED EMPLOYER PAYROLL RECORD

1. The Applicant or Covered Employer is responsible for:

- a. Maintaining payrolls for all covered employees and related records on the **Payroll Record for Living Wage Compliance (LW-32)**, containing:
 - The number of hours worked each day;

PART VI: RECORD KEEPING & REPORTS PROCESS

- The gross wages;
 - Deductions made;
 - The actual wages paid;
 - A record of health benefit payments
 - A record of compensated days off, and
 - Any other data as required by the *Living Wage* Unit of the SCDOL.
- b. Preserving these records for a period of three (3) years.
- c. Producing for inspection and copying payroll records for any or all of its covered employees for the prior three (3) year period as required by the *Living Wage* Unit of the SCDOL.
- d. Maintaining a separate listing of non-exempt covered employees which shall include the name, date of hire, occupational classification, rate of pay and benefits paid.

2. The *Living Wage* Unit is responsible for:

- a. Reviewing all required Covered Employer records for compliance with the *Living Wage* Law at least once every three years.
- b. Advising Administrative Awarding Agency, Managing Agency and applicant/covered employer of any irregularities found.
- c. Maintaining all documentation on file.

D. ANNUAL CONTRACT COMPLIANCE STATUS REPORT

1. The *Living Wage* Unit of the SCDOL is responsible for:

- a. Submitting an annual report (**Annual Contract Compliance Report**) to the County Legislature which shall include at a minimum:
 - A listing and status of all RFPs and RFQs.

PART VI: RECORD KEEPING & REPORTS PROCESS

- A listing of service contracts and lease agreements executed and financial compensation awarded, including the term, dollar amount and the service or compensation awarded to which the *Living Wage* Law applies.
- All complaints, hearings, determinations and findings, exemptions requested and granted.

E. SPECIAL REPORTS

- a. Special reports and recommendations on significant issues of interest to the Legislature shall be submitted as deemed appropriate by the Suffolk County Department of Labor or as directed or requested by the Suffolk County Legislature.

F. FORMS

Payroll Record for Living Wage Compliance (LW-32)

**LIVING WAGE LAW
RULES & REGULATIONS**

PART VII

**APPLICABILITY &
DURATION OF REQUIREMENTS**

SECTION A: SUMMARY

SECTION B: APPLICABILITY

SECTION C: DURATION

PART VII

DURATION OF REQUIREMENTS

A. SUMMARY

This PART outlines the applicability and duration of requirements as defined in the Suffolk County *Living Wage* Local Law 12-2001, Chapter 347 (subparagraphs 11 & 12).

B. APPLICABILITY

This Law shall apply to all actions occurring on or after July 1, 2002, and shall apply to:

1. A contract or subcontract entered into or renewed after the applicability date of the Law;
2. Financial compensation awarded after the applicability date of this Law;
3. A contract amendment consummated after the applicability date of this Chapter which itself meets the financial threshold requirement of the Law; and
4. Supplemental financial compensation provided for after the applicability date of the Law which itself meets the requirements of the Law.

This Law shall **not** apply to:

1. Employees working in a *bona fide* executive, administrative or professional capacity; and
2. Employees earning annually at least Twenty three thousand, six hundred sixty and 00/100 Dollars (\$23,660); or
3. Persons with disabilities (earning or productive capacity is impaired by age, physical deformity, mental deficiency or injury) working in employment programs where the employer holds a current sub-minimum wage certificate issued by the United States Department of Labor, or

where such certificate could be issued but for the fact that the employer is paying a wage higher than the minimum wage.

C. DURATION OF REQUIREMENTS

1. Receipts of compensation in an amount greater than \$50,000 in any twelve-month (12) period shall require compliance with this Law for the life of the project and for as long as such compensation is being received by a beneficiary.

Compensation in the form of a service contract or subcontract of at least \$10,000, as defined in PART I, Section III, "Compensation" (B), shall require compliance with the Law for the term of the contract or subcontract.