

CITY OF SAN DIEGO

**RULES FOR WORKER RETENTION FOR SERVICES OVER \$25,000
[Service Worker Retention Ordinance Rules]**

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LIVING WAGE PROGRAM

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RULES FOR SERVICE CONTRACTS OVER \$25,000
[Service Worker Retention Ordinance Rules]

The purpose of the following rules [Rules] is provide procedures for implementing the provisions for the retention of workers in service contracts, set forth in Division 28 of Article 2 of Chapter 2 of the San Diego Municipal Code [“Service Worker Retention Ordinance”].

A. APPLICABILITY

- 1. Contracts Subject to the Service Worker Retention Ordinance.** These Rules apply to City contracts for provision of services at a City facility or any other location in excess of \$25,000 and for a term of more than 90 days.
 - a. Purchase or lease of goods, products, equipment supplies or other property is excluded.
 - b. Professional service contracts are excluded.
 - c. Construction contracts are excluded.
- 2. Subcontracts Subject to the Service Worker Retention Ordinance.** These Rules apply to all subcontractors on contracts covered by the Service Worker Retention Ordinance.
- 3. Employees Covered by Service Worker Retention Ordinance.** These Rules apply to any service employee who has been employed by the Terminated Contractor for a period of six months or longer at the site or sites covered by the Terminated Contractor’s contract with the City.
- 4. Employees Not Covered by Service Worker Retention Ordinance.** These Rules do not apply to managerial, supervisory, or confidential employees, or those persons required to possess an occupational license or certificate.

B. TRANSITION PROCEDURES

- 1. Exchange of Employee Information.** Within ten days of notice of the termination of a contract between a Terminated Contractor and the City, or a subcontract, the Terminated Contractor shall provide to the New Contractor the names, addresses, dates of hire and employment occupation classification of all covered employees of the Terminated Contractor.
- 2. 90 Day Transition Period.** The New Contractor shall retain the covered employees for a 90 day transition period.

- a. The New Contractor may retain the covered employees at the same previous terms and conditions; establish new terms and conditions; or set terms and conditions as required by law.
 - b. The New Contractor shall advise the retained covered employees that a written performance evaluation will be provided at the end of the 90 day transition period.
- 3. Fewer Employees Required.** If the New Contractor determines, during the 90 day transition period, that fewer employees are required to perform the services:
- a. The New Contractor shall retain such covered employees as are necessary, determined by date of hire within job classification.
 - b. The New Contractor shall maintain a preferential hiring list of those covered employees not initially retained for purposes of hiring during the 90 day transition period should additional employees become necessary.
- 4. No Discharge Without Cause.** During the 90 day transition period, unless fewer employees are required to perform the services, the New Contractor shall not discharge, without cause, a covered employee.
- 5. Written Performance Evaluation.** At the end of the 90 day transition period, the New Contractor shall provide a written performance evaluation to each covered employee.
- 6. No Obligation to Retain.** The New Contractor shall have no obligation to retain any covered employee beyond the 90 day transition period.

C. ENFORCEMENT

- 1. Employee Response to Violation.** A covered employee who has been discharged by a New Contractor in violation of this division may bring a private cause of action in the State court against the New Contractor and may be awarded:
 - a. Back pay for each day during which the violation continues, calculated at the average rate of pay received during the last three years of the covered employee's employment in the same occupation classification or the final regular rate received by the covered employee on the contract, whichever is higher.
 - b. Costs of benefits, if any, the New Contractor would have incurred for the covered employee under the New Contractor's benefit plan.
 - c. If the covered employee is the prevailing party, the court shall award reasonable attorney's fees and costs in addition to any other award of damages.
- 2. City Response to Violation.** A violation of this division shall entitle the City to terminate the contract and to pursue such other legal remedies as may be available.

- 3. Availability of Other Forms of Relief.** These Rules do not limit a covered employee's rights against the Terminated Contractor or the New Contractor under other applicable laws.

D. EFFECTIVE DATE

These Rules shall take effect ninety (90) days after May 24, 2005, the date of adoption by the City Council of City Ordinance O-19382.

E. CONSISTENCY WITH FEDERAL AND STATE LAW

The Service Worker Retention Ordinance and these Rules do not apply in instances where application would be prohibited by Federal or State law or where application would violate or be inconsistent with the terms and conditions of a grant or contract with a Federal or State agency.

F. SEVERABILITY

If any provision of the Service Worker Retention Ordinance or these Rules is found to be legally invalid by any court of competent jurisdiction, the remaining provisions remain in full force and effect.