

A LOCAL LAW adding Article III to Chapter 233 of the Administrative Code of Westchester County to establish a Living Wage Incentive to Promote Health and Safety for the Residents of Westchester County and to create a Child Care Living Wage Task Force.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 233 of the Administrative Code of Westchester County is amended to add a new Article III, as follows:

**ARTICLE III**

**WESTCHESTER COUNTY LIVING WAGE INCENTIVE**

**Sec. 233.401.**

**Sec. 233.402.**

**Sec. 233.403.**

**Sec. 233.404.**

**Sec. 233.405**

**Sec. 233.406.**

**Sec. 233.407.**

**Sec. 233.408.**

**Sec. 233.409.**

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**Definitions.**

**Living Wage Incentive Rate Established.**

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**Posting and Notification.**

**Compliance, Enforcement and Sanctions.**

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**No Impairment Clause.**

**No Private Right of Action Against the County.**

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**Sec. 233. 401. Definitions.**

1. “County Assistance” shall mean any tax abatement, grant, loan, bond financing or other economic incentive of at least \$100,000 realized over a twelve month period that is awarded directly by the County to a non-governmental entity for purposes related to economic or business development. County Assistance shall not include assistance awarded by the

Westchester County Industrial Development Agency or any other entities in which the County lacks the legal authority to impose eligibility conditions beyond those enumerated in state law, nor shall it include any other categories of assistance where state or federal law prohibits the County from making such assistance subject to the requirements of this section. In addition, County Assistance shall not include assistance awarded to a not-for-profit organization the mission of which is to provide cultural, educational or social services.

2. “County Lease” shall mean any agreement where the County leases or rents a commercial building, office space or facility from a non-governmental entity and where the County is the primary tenant and receives Building Services. For purposes of this section, the County is a “primary tenant” where it occupies 50% or more of the entire commercial building, office space or facility. County Lease shall also include lease agreements between the County and any tenant or concessionaire, not including a tenant or concessionaire that utilizes the County property primarily for storage or maintenance of equipment, that occupies County-owned property or facility and provides or receives Building Services and the total value of such agreement is in excess of \$50,000.00 over any twelve-month period.

3. “Covered Employee” shall mean a person who performs Home Care or Building Services in connection with a Service Contract, County Assistance, or a County Lease. Employees shall not be considered Covered Employees if they are either (1) under eighteen (18) years of age; (2) work in a government sponsored training program; (3) are volunteers; and/or (4) are employed as part of a County or private youth employment program.

4. “Covered Employer” shall mean any person that (1) is a party to a Service Contract; or (2) provides Building Services in connection with a County Lease or County Assistance,

provided that the Covered Employer employs at least fifteen (15) full-time equivalent employees regardless of whether those employees are Covered Employees or not.

5. “Full-Time Equivalent” shall mean any combination of hours worked by one or more Covered Employees that generates between 35 and 40 hours of work per week.

6. “Health Insurance Benefits” shall consist of the payment by the Covered Employer to its Covered Employees or on their behalf of an amount no less than \$1.50 per hour worked towards the provision of health insurance benefits for employees and/or their dependents. A Covered Employer is not required to provide health insurance benefits to a Covered Employee that works less than seventeen and one half (17 ½) hours per week, but if the Covered Employer elects not to provide health insurance benefits, it must pay its Covered Employees the higher Living Wage Incentive Rate specified in §233.402(2) for employers that elect not to provide health insurance benefits.

7. “Person” shall mean any natural person, firm, association, partnership, corporation, association, business or organization of any kind.

8. “Qualified Retention Employee” shall mean a Covered Employee who performed Building Services for a Covered Employer for at least three months when a Covered Employer sells, transfers, assigns or otherwise conveys the duties of a contract to perform Building Services to another Person.

9. “Service Contract” means any duly executed contract between the County and a person or his or her subcontractor whereby the County is committed to expend funds for services enumerated below and which are provided to or on behalf of the County, and which involves an expenditure of \$50,000 or more in any twelve month period. The term “Service Contract” shall not include contracts for the purchase or lease of goods, products, equipment, supplies, services

incidental to the delivery of services or other property. Service Contracts shall be limited to the following categories:

(a) “Building Services” shall mean any custodial, janitorial or security guard services; and

(b) “Home Care Services” shall mean personal care services provided by the Westchester County Department of Social Services under the County’s Medicaid Personal Care/Home Attendant programs and in accordance with the applicable provisions of Federal and New York State law, rules and regulations.

10. “Service Contractor” shall mean any person that enters into a Service Contract with the County.

11. “Subcontractor” shall mean any person, other than an employee, that enters into a Service Contract with a Service Contractor to assist the primary Service Contractor in performing a Service Contract.

**Sec. 233.402. Living Wage Incentive Rate Established.**

1. Applicability. Covered Employers shall pay no less than the Living Wage Incentive Rate to their Covered Employees who actually perform work or render services in connection with a project, matter, contract or subcontract for which the Covered Employer (1) has received a Service Contract; or (2) provides Building Services rendered in connection with a County Lease or County Assistance as all such terms are defined in Section 233.401. Except as provided for in Sections 233.402(5) or 233.409 herein, Covered Employers shall pay the greater of (1) the living wage incentive pursuant to this law; (2) terms of collective bargaining agreement between the Covered Employer and his or her Covered Employees; or (3) the applicable prevailing wage.

2. Amount of Living Wage Incentive Rate. The living wage incentive shall be calculated on an hourly basis as follows:

a. commencing January 1, 2004:

\$10.00 per hour plus \$1.50 for health insurance benefits; or

\$11.50 without health insurance benefits;

b. commencing January 1, 2005:

\$10.75 per hour plus \$1.50 for health insurance benefits; or

\$12.25 without health insurance benefits;

c. commencing January 1, 2006:

\$11.50 per hour plus \$1.50 for health insurance benefits; or

\$13.00 without health insurance benefits;

3. Compensated Leave. Covered Employers shall provide at least twelve (12) compensated days leave per year to Covered Employees working full-time for sick leave, vacation, or personal necessity at the Covered Employee's request. Paid holidays, consistent with established employer policy, may be counted toward the required twelve (12) compensated days off. Part-time Covered Employees shall be entitled to a pro-rata equivalent of the compensated days provided to Covered Employees working full-time. A Covered Employee shall be eligible to use accrued days off after the first six months of employment with the Covered Employer as a Covered Employee or in accordance with the policies of the Covered Employer, whichever occurs first. A Covered Employee shall accrue one day of compensated leave per month of full-time equivalent employment.

4. All County Service Contracts, County Assistance agreements, County Leases and requests for proposals for County Service Contracts which are subject to the requirements of this Article shall contain the following language or substantially equivalent language:

a. This contract, lease or agreement is subject to the Westchester County Living Wage Incentive as set forth in Article III of Chapter 233 of the Laws of Westchester County (“Article III”). Article III requires that all Covered Employers shall provide payment of the Living Wage Incentive as set forth in §233.402 of the Laws of Westchester County.

b. Pursuant to the provisions of Article III, the County shall have the authority, under the appropriate circumstances, to terminate this contract and seek other remedies as set forth therein, for violations of this Article.

c. The Covered Employer agrees to uphold the Worker Retention Policy for Certain Covered Employees as set forth in §233.403, where such provision is applicable.

d. The Covered Employer agrees to require any subcontractor or other employer that will provide Home Care Services or Building Services in connection with this contract, lease or agreement, to pay the Living Wage Incentive Rate and comply with all other requirements of Article III, including the Worker Retention Policy for Certain Covered Employees, where such provision is applicable.

5. No Reduction in Collective Bargaining or Prevailing Wage Rates. Nothing in this Article shall be construed or interpreted to require or authorize any Covered Employer to reduce wages set by a collective bargaining agreement or required under any prevailing wage in order to comply with the Living Wage Incentive Rate as set forth in §233.402.

**Sec. 233.403. Worker Retention Policy for Certain Covered Employees.**

In the event that a Covered Employer who provides Buildings Services pursuant to a Service Contract sells, transfers or assigns or otherwise conveys the duties of a Service Contract to another Person, all Qualified Retention Employees shall be retained for a period of not less than ninety (90) days. A Covered Employer may not discharge Qualified Retention Employees without cause during that ninety (90) day period.

**Sec. 233.404. Retaliation and Discrimination Barred.**

It shall be unlawful for any person to retaliate or discriminate against an individual for making known a violation of this Article, for seeking or communicating information to others regarding rights conferred by this Article, for exercising any other right protected under this Article or for participating in any proceeding relating to this Article. The protection shall also apply to any individual who mistakenly, but in good faith, alleges a violation of this Article, or who seeks or communicates information regarding rights conferred by this Article in circumstances where he or she mistakenly, but in good faith, believes this law is applicable.

**Sec. 233.405. Reporting Requirements.**

1. Notice of Application for Service Contracts, County Lease or County Assistance. No Service Contract, County Lease or County Assistance shall be duly executed, unless, the Covered Employer files with the County of Westchester, a written certification which shall include the following:

a. The name, address and telephone number of both the prospective Covered Employer, and of any subcontractor or other employer that will employ Building Services or Home Care Services employee in connection with the Service Contract, County Lease or for which County Assistance is awarded;

b. A description of the service to be provided under the Service Contract, County Lease or for which County Assistance is awarded;

c. A statement of the projected number of Covered Employees, by job title and wage levels, that will be employed under the prospective Service Contract, County Lease or County Assistance or that will be employed by any subcontractor or other employer that will employ Building Services or Home Care Service employees in connection with the Service Contract, County Lease or for which County Assistance is awarded;

d. A written commitment to pay all Covered Employees a Living Wage Incentive as defined under this Article.

2. Notice of New Subcontractor. During the term of a Service Contract, County Lease or project for which County Assistance is awarded, if a new subcontractor or other employer begins providing Building Services or Home Care Services in connection with the Service Contract, County Lease or project for which County Assistance is awarded, the Covered Employer shall promptly provide written notification to the County of the name, address and telephone number of the new Covered Employer.

3. Payroll Record Keeping and Reporting. Each Covered Employer shall maintain payrolls records, including any supplementary documentation relating to hours worked, withholdings and/or contributions for all Covered Employees and shall preserve same for a



period of not less than three (3) years from the date of termination of the applicable Service Contract, County Lease or County Assistance program pursuant to which the Living Wage Incentive is paid. Upon written request by the County, a Covered Employer shall produce for inspection and copying said payroll records for all of its Covered Employees.

**Sec. 233.406. Posting and Notification.**

1. Every Covered Employer shall conspicuously post on its premises, in an area where notices to employees and applications for employment are regularly posted or in an area that is accessible to all Covered Employees on a daily basis, two copies of this law informing employees of their rights under this Article. The Covered Employer shall also provide to each Covered Employee, in person or by mail, a copy of a written notice informing the Covered Employees of their rights under this Article.

2. The Covered Employer shall notify Covered Employees of the eligibility requirements with Federal Earned Income Tax Credit under Section 32 of the Internal Revenue Code of 1954 and for the New York State Earned Income Tax Credit (“EIC”). The Covered Employer shall make available forms to secure the EIC credits, upon request of the Covered Employee.

**Sec. 233.407. Compliance, Enforcement and Sanctions.**

1. Grievance Procedure. Any Covered Employee who believes that any Covered Employer is in violation of the requirements of this Article has the right to file a sworn complaint with the County department or agency that monitors or oversees the Service Contract, County Lease or County Assistance with supporting documentation, which complaint shall contain a

detailed outline of the alleged violation. In filing a grievance and upon the request of the complaining Covered Employee, said Covered Employee's identity shall be kept confidential.

2. A Covered Employer may dispute allegations of the complaint with the appropriate evidence. The County shall make a final determination on the question of compliance.

3. Where a finding of non-compliance with this Article has been determined by the County, the Covered Employer will be given a written notice by the County. The Covered Employer shall be given the right to cure the violation within thirty (30) days from the date of the notice. Should the Covered Employer fail to cure the violation within such time, the County shall impose sanctions including, but not limited to, one or more of the following:

a. Suspending and/or terminating the Service Contract, County Lease or County Assistance agreement for cause;

b. Requiring the Covered Employer to refund the County an amount relative to the particular County Contract, County Lease or County Assistance involved and the extent of the violation;

c. Deeming the Covered Employer ineligible for future County Service Contracts, County Leases or County Assistance unless and until all penalties and restitution have been paid in full, and until the County determines in its sole discretion to restore eligibility;

d. Imposing a fine payable to Westchester County in the sum of five hundred dollars (\$500.00) per week for each Covered Employee who was not paid in accordance with this Article;

e. Requiring the Covered Employer to: (1) reinstate the affected Covered Employee, (2) make restitution of wages to the Covered Employee; and (3) grant

to the Covered Employee any additional relief deemed appropriate by the County to make whole the Covered Employee.

**Sec. 233.408. Child Care Living Wage Task Force.**

There shall be a Child Care Living Wage Task Force that will research and develop a proposal by August 1, 2003, to establish a Child Care Living Wage Incentive Program for child care workers employed at child care agencies that contract with the Westchester County Department of Social Services to serve significant numbers of low-income Westchester families. This membership of this Task Force shall consist of a total of ten (10) members: five (5) members appointed by the County Executive; two (2) members appointed by the County Board of Legislators; two (2) members of the Westchester County Living Wage Coalition; and one (1) member from the Child Care Council of Westchester. This task force shall develop a proposal by (1) surveying best practices developed in other localities for securing living wages for child care workers; (2) consulting with program administrators and policy experts with experience; (3) considering the development, programming, and operations of the child care industry to evaluate and improve the delivery of services, worker retention policies, and training programs through the use of child care living wage incentive programs.

**Sec. 233.409. No Impairment Clause.**

Nothing herein shall cause any person to impair an existing Service Contract, County Lease, County Assistance, collective bargaining agreement or contravene any applicable provision of law.

**Sec. 233.410. No Private Right of Action Against the County.**

No person shall have the authority to maintain a private right of action against Westchester County or any of its officers or employees relating to either the enforcement or implementation of this Article.

**Sec. 233.411. Severability.**

If any section of this Article or the application thereof to any individual, partnership, or circumstance shall be adjudged invalid or unconstitutional by any court of competent jurisdiction, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the controversy in which such order or judgment was rendered.