

Ordinance No. 892-2022

By Council Member Griffin

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio 1976 by enacting new Sections 190.01 - 190.06 related to Wage Theft and Payroll Fraud Prevention; and to amend Section 189.04 of the Codified Ordinances, as amended by Ordinance No. 2009-A-99, passed June 19, 2000, relating to the Fair Employment Wage Board.

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health, or safety, now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances are supplemented by enacting new Sections 190.01, 190.02, 190.03, 190.04, 190.05 and 190.06 to read as follows:

Chapter 190 – Wage Theft and Payroll Fraud Prevention

Section 190.01 Definitions

For purposes of this Chapter:

(a) (1) “Adverse Determination” means a final adjudication, not subject to appeal, by a court of competent jurisdiction, a final action by a state or federal governmental agency, or a final adjudication by an arbitrator or arbitral body of competent jurisdiction, including, but not limited to, an administrative merit determination, arbitration award or decision, civil judgment, or criminal conviction, that a Contractor, Subcontractor or recipient of Assistance has committed Wage Theft or Payroll Fraud. If the person or entity appeals or contests the final adjudication, final action, or final determination, the Adverse Determination becomes effective whenever that initial adjudication, action, or determination, in whole or in part, is affirmed on appeal or after the contest, or the appeal or contest is denied.

(2) A settlement agreement or other similar agreement entered into by a person or entity related to any allegations of Wage Theft or Payroll Fraud to resolve the matter prior to the issuance of an Adverse Determination or while an appeal is pending shall not constitute an Adverse Determination.

(3) Nothing in this section shall be construed to permit a collateral attack on the jurisdiction of a court, state or federal governmental agency, or an arbitrator or arbitral body to avoid being placed on the Adverse Determination List.

(b) “Adverse Determination List” means a list published by the Fair Wage Employment Board and updated ~~at least once every six (6) months~~ every month, of persons or entities that have received an Adverse Determination within the preceding ~~two (2) three (3) years~~.

(c) “Applicable Department” means the City department administering Construction and Improvement Contracts or Service Contracts or the City department to which a person or entity applies for Assistance.

(d) “Assistance” shall have the same meaning as in division (b) of Section 189.01.

(e) “Contract” means any Construction or Improvement Contract and any Service Contract entered into pursuant to these Codified Ordinances.

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(f) “Contractor” means any person or entity who enters into a Construction or Improvement Contract or Service Contract with the City.

(g) “Construction or Improvement Contract” means any contract entered into pursuant to Charter Section 167 or Chapter 185 of the Codified Ordinances.

(h) “City” means the City of Cleveland and all City departments, divisions and offices.

(i) “Fair Employment Wage Board” or “FEWB” means the board established under Chapter 189 of these Codified Ordinances.

(j) “Payroll Fraud” means concealing an entity’s true payroll tax liability or other financial liability to a government agency from government licensing, regulatory or taxing agencies through misclassification of employees, failure to report or underreported payment of wages, or executing a cash transaction while failing to maintain proper records of reporting and withholding.

(k) “Person or Entity” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity recognized at law by the State of Ohio, and their successors, predecessors, affiliates, and assigns, who may employ individuals or enter into contracts with the City.

(l) “Recipient of Assistance” means:

(1) Any Person or Entity who enters into one (1) or more Contracts with the City for Assistance;

(2) Any Person or Entity that is a direct recipient of Assistance.”;

~~(k)~~ (m) “Service Contract” shall have the same meaning as in division (j) of Section 189.01.

~~(l)~~ (n) “Subcontract” means any contract between a Contractor and a person or entity to assist in performance of a Contract; and a contract between a person receiving Assistance and a person or entity to support the project or matter for which the person is receiving Assistance.

~~(m)~~ (o) “Wage Theft” means a violation of the Ohio Prompt Pay Statute, Section 4113.15 RC; the Ohio Minimum Fair Wage Standards Act, Chapter 4111, RC; Oh. Const. Art. II, Sec. 34a; Chapters 4109 or 4115 RC; Sections 4113.17, 4113.18, 4113.52 or 4113.61 RC; or a violation of any substantially equivalent federal or state law; as any of these laws may be amended or superseded.

Section 190.02 Disclosure of Adverse Determination; Effect

(a) Any person or entity bidding on or making a proposal for a Construction or Improvement Contract or a Service Contract, or applying for Assistance, and any prospective Subcontractors, shall disclose any Adverse Determinations occurring within the previous ~~two (2)~~ three (3) years to the Fair Employment Wage Board (FEWB) and to the Applicable Department.

(b) A person or entity that has received an Adverse Determination within the previous ~~two (2)~~ three (3) years from the due date of a bid or proposal for a Construction or Improvement Contract or Service Contract, or application for Assistance, shall not be eligible to enter into any Contract, or an application for Assistance, or a Subcontract, for ~~two (2)~~ three (3) years from the date of the last Adverse Determination, unless the person or entity receives a waiver pursuant to Section 190.04.

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Section 190.03 Monitoring Contracts; Adverse Determination List

(a) Any person employed on a Contract or Subcontract, who alleges that a violation of federal or state law relating to Wage Theft or Payroll Fraud has occurred, may file a written complaint with the Director of the Applicable Department within one hundred and eighty (180) days of the alleged violation or knowledge of the alleged violation. The complaint shall be a ~~notarized~~ statement with the name and address of the person making the charge, the name and address of the employer alleged to have committed the violation of federal or state law, and any other information as may be required by the Director of the Applicable Department. The Director of the Applicable Department shall inform the FEWB of the complaint and refer the complainant to the appropriate governmental agency for review.

(b) The FEWB shall create and maintain a list of persons or entities that have reported Adverse Determinations pursuant to Section 190.02, the Adverse Determination List. The FEWB shall cause the list to be published on the City website and updated every ~~six (6) months~~ month. The FEWB shall monitor the outcome of any referral made pursuant to division (a) of this section and update the Adverse Determination List as necessary.

Section 190.04 Waiver

(a) An Applicable Department may request a waiver from the FEWB on behalf of a person or entity with an Adverse Determination that places the person or entity on the Adverse Determination List. The FEWB may grant the waiver if the Applicable Department demonstrates that the inability of the Applicable Department to contract with that person or entity would result in serious disruption to the efficient and orderly operations of the City or the person or entity is a sole source provider of goods or services that are necessary for the efficient and orderly operations of the City.

(b) A person or entity may request a waiver from the FEWB of an Adverse Determination that places that person or entity on the Adverse Determination List. The request shall be in writing and shall include one or more of the following reasons for granting the waiver:

(1) that there has been a bona fide change in ownership of the person or entity since the Adverse Determination;

(2) the person or entity has taken significant and verifiable actions to prevent any future Adverse Determinations and has complied with the requirements of the final adjudication, final action, or final determination placing that person or entity on the Adverse Determination List, including the payment of required back pay, interest penalties and fines; and

(3) any other information the person or entity deems relevant to granting the waiver, or that the FEWB wishes to consider.

(c) The FEWB may grant a waiver under division (b) of this section by removing the person or entity from the Adverse Determination List, reducing the time period a person or entity is on the Adverse Determination List, or allowing the person or entity a one-time waiver to enter into a Contract, Subcontract or to apply for Assistance.

(d) A majority vote of the FEWB is required to grant a waiver under this section.

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Section 190.05 Community Education

(a) The FEWB shall partner with employers, labor organizations and community groups to inform residents of their workplace rights under federal, state and local law, provide information to residents about available resources, and to communicate the benefits of this chapter to businesses, employees and community groups.

(b) The FEWB shall review the effectiveness of the wage theft and payroll fraud ordinance to ensure that those entities receiving public assistance, government loans, and contracts from the City are adhering to the ordinance. The FEWB shall make recommendations to the Council, when appropriate, regarding issues pertaining to the wage theft and payroll fraud policy.

Section 190.06 Violations; Penalty

(a) No person shall willfully withhold the information required under Section 190.02.

(b) Any person who violates division (a) is guilty of a misdemeanor of the first degree.

Section 2. That Section 189.04 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 2009-A-99, passed June 19, 2000, is amended to read as follows:

Section 189.04 Fair Employment Wage Board

(a) The Fair Employment Wage Board (FEWB) shall review the effectiveness of the living wage ordinance to ensure that the community is informed on whether those companies that are receiving public assistance, government loans, and service contracts from the City are adhering to the ordinance. The FEWB shall make recommendations to the Cleveland City Council, when appropriate, regarding issues pertaining to the living wage policy. The FEWB shall also perform the duties and responsibilities assigned to it under the Wage Theft and Payroll Fraud Prevention ordinance as codified in Chapter 190.

(b) The FEWB shall be composed of two (2) representatives from the business community, two (2) representatives from labor organizations, one (1) representative from community groups, one (1) representative from the Mayor's office and one (1) representative from Cleveland City Council. The FEWB members shall be appointed to the FEWB by the Mayor, subject to the approval of City Council. Each FEWB member shall be a resident of the City of Cleveland. No person shall be appointed to the Fair Employment Wage Board who has any interest in a contract, loan, grant or other financial assistance from the City of Cleveland.

(c) The Mayor shall initially appoint three (3) members of the FEWB for one (1) year terms, two (2) members to two (2) year terms, and two (2) members for a three (3) year term. Thereafter, all members shall serve three (3) year terms. Members may serve more than one (1) term.

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(d) At the beginning of each year the FEWB members shall elect a chairperson and vice chairperson by majority vote. The FEWB shall hold meetings quarterly and in special sessions as called by the chairperson or by a majority of the members. All meetings of the FEWB shall be open to the public. All meetings will allow for public testimony on compliance with the Fair Employment Wage Chapter and minutes of all meetings shall be taken. The FEWB shall adopt such rules and regulations as the Board may deem necessary or desirable for the conduct of its business.”.

(e) The FEWB shall be provided with and shall review:

(1) All reports on compliance filed by Applicable Departments as provided by this chapter;

(2) The results of any investigations of Covered Employers as provided by this chapter;

(3) All applications for exemptions from coverage filed by recipients of Assistance and Service Contractors as provided by this chapter.

The FEWB shall provide recommendations regarding such matters to City Council.

(f) The FEWB shall monitor, analyze and study information provided by the City to ensure that Covered Employees whose employers are receiving incentives for the offer or provision of health care insurance are receiving or being offered substantially equivalent health care benefits as are provided to City employees.

Section 3. That existing Section 189.04 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 2009-A-99, passed June 19, 2000, is repealed.

Section 4. That any vacancies on the FEWB shall be filled no later than 180 days after the effective date of this ordinance.

Section 5. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

BAG:rn
09/12/22

