Port of Oakland Living Wage Policy
Living Wage Charter Amendment §728 ("Measure I")
Frequently Asked Questions

On March 5, 2002, Oakland voters passed Measure I ("§728). This measure amends the City of Oakland Charter effective April 25, 2002, by adding Section 728 entitled "Living Wage and Labor Standards at Port-assisted Businesses". Answers to some common questions about the measure are provided here. For more information, please call the Port of Oakland's Social Responsibility Division at (510) 627-1390.

What is meant by "Living Wage"?
"Living wage" is an hourly wage level adopted by some local governments that sets wages at a level higher than the Federal or State minimum wage.

When do businesses have to start complying with the measure and when will covered employees begin receiving the higher wage?
Each covered business must comply with §728 when it enters into a lease, contract or concessionaire or other agreement with the Port of Oakland, or when an existing agreement is amended to benefit the business, **and** the agreement subject to the Charter Amendment has been entered into on or after **April 26, 2002**. For example, if a lease contract expires in three years, compliance would not be required for the three years the lease remains in effect and unamended. But a contract entered into on April 26, 2002, or amended on April 26, 2002, to benefit the party contracting with the Port would be subject to §728. Covered employees would be entitled to the higher wage on the effective date of the new or amended agreements. An exception to this rule is that month-to-month tenants of the Aviation or Maritime Divisions are required to pay their employees a Living Wage. On October 1, 2002, the Port Board of Directors Amended Port Ordinance Number 3666 ("Ordinance 3666") to incorporate the provisions of §728 and to apply those provisions to month-to-month tenants effective November 1, 2002. Any tenancy agreement with the Aviation or Maritime Divisions that go into month-to-month status after November 1, 2002 will be subject to the Living Wage requirements if the contract meets the other minimum standards for coverage.

All Port agreements include a requirement that contracting parties with the Port comply with all applicable laws, such as living wage.

What is the wage rate specified in the Charter Amendment?
Covered businesses are required to pay at least $14.98 with credit for health benefits worth up to $2.21 per hour, and $17.19 without health benefits, as of July 1, 2020. The rates will be adjusted annually thereafter. Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.

Specifically, what types of businesses are covered by the Charter Amendment?
The measure applies to businesses involved in a Port of Oakland aviation or maritime business (i.e., those located at Oakland International Airport or in the seaport area or those providing aviation or maritime related services) that also:

- pay the Port $50,000 or more by means of a contract, lease or license (for leases under one year, this applies if $50,000 or more is paid over 5 years),
- hold service contracts with the Port, where the Port pays $50,000 or more over the term of the contract,
- hold a subcontract, sublease, sublicense, management agreement, etc. with any of the above companies, or
- receive $50,000 or more in financial assistance from the Port.
- have more than 20 employees spending more than 25% of their work time working on Port-related work.

What type of employees are covered? Does it cover full-time and part-time employees?
Employees spending at least 25% of their work time on Port-related employment are covered, as long as they work for a covered business under the terms of a covered contract. Both part-time and full-time employees are covered if they meet those criteria.

Are any exemptions or waivers allowed?
Exemptions are provided for:

- Businesses with fewer than 20 employees;
- Employees spending less than 25% of their work time on Port-related employment;
- Employees under 21 years old who are employed by a non-profit for training, after-school or summer employment for a maximum of 90 days.

Waivers may be approved by the Board in the event of economic hardship provided the covered business can demonstrate that the waiver will further the public interest in providing training positions that will enable employees to advance into permanent living wage or better positions.

How do the worker retention provisions of the Charter Amendment work?
Worker retention provisions apply to aviation and maritime businesses. Briefly, any business that replaces another business in a lease, contract, subcontract, etc. is required to offer employment to the employees of the prior tenant or contractor for a period of 90 days. If the new business already has its own employees, then employment must be offered on the basis of seniority to its own and the prior employees. Managerial, supervisory, professional, paraprofessional, confidential and office employees are exempted from this provision.

How is the Living Wage Charter Amendment enforced? Are there penalties against businesses found not to be complying?
Covered businesses are required to submit quarterly reports by the last day of March, June, September and December to the Port with the name, wage rate and benefits of each employee. Failure to submit reports on time results in a penalty of $500 per day. Additional monitoring requirements may be imposed by the City of Oakland's City Manager. Each business is required to permit access to its workforce by labor organizations and by authorized Port representatives to ensure compliance. Any person may bring action against a business in the Municipal Court or Superior Court of the State of California to enforce the measure.

Does the Port's Living Wage Policy (formed from the Port's Living Wage Ordinance and the City Charter Amendment) cover particular kinds of service contracts, such as those with temporary employment agencies?
Each contract needs to be reviewed and evaluated for coverage by Living Wage on the basis of its particular terms. For this reason, we cannot presumptively include or exclude whole classes of contracts without going through a basic evaluation process for each contract or agreement. The process may end at the first question or at the last. For instance, employment contracts with temp agencies are service contracts to the Port, so the Ordinance may apply. If the temps are providing support to the Aviation or Maritime divisions, the Charter section may also apply. Whether either or both apply then depends on the number of employees the agency has working for the Port under a covered contract and the value of the contract with the Port.

Does the Port's Living Wage Policy cover independent contractors working through a broker, such as independent truckers?
Trucking is not likely to be covered but the determination requires specific analysis of the contract involved. Under the Port's Ordinance (3666), a service contract does not include a construction contract covered by prevailing wage requirements. If the trucker is a subcontractor under such a public works contract the trucker would not be covered. Under Port Ordinance 3666, a service contract also does not include contracts for the purchase or lease of goods, products equipment or supplies or services incidental to the delivery of products, equipment or commodities.

However, even if an independent contractor is excluded for the reasons stated above, an analysis of the contract is required to determine if it is a covered contract under the Charter Amendment. Under the Charter there is no exclusion for public works contracts. However, the contract must still be with a business that principally provides services related to maritime or aviation businesses or is located in the Maritime or Aviation divisions areas as the defined by the Port, employs more than 20 employees on the Port related contract work, and the contract must involve payments worth more than $50,000. Most independent contractors do not meet these requirements and would not be covered by §728.