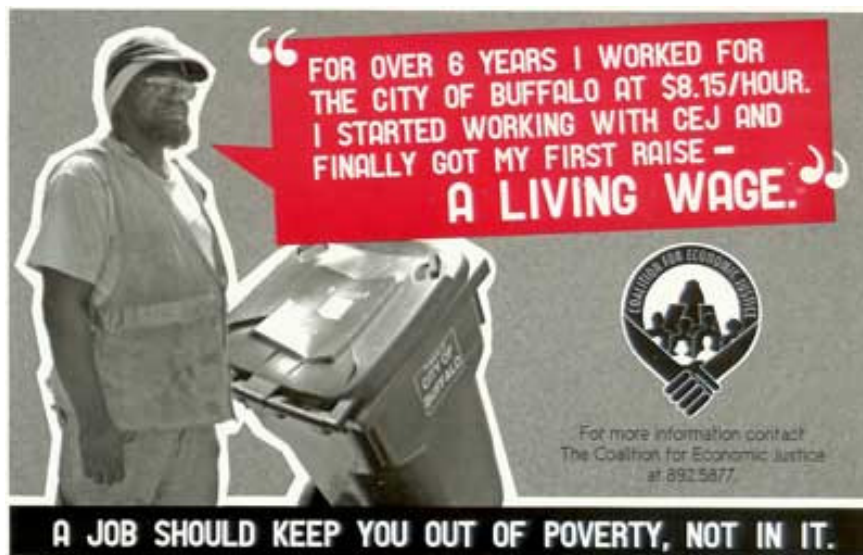


The Buffalo Living Wage Ordinance

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The term “living wage” means “a wage level that offers workers the ability to support families to maintain self respect and to have both the means and the leisure to participate in the civic life of the nation.”¹

“The living wage movement is a means through which we can both protest and formulate a concrete alternative to the economic injustices that have prevailed in the United States for over a generation.”²

What is Buffalo’s Living Wage Ordinance?

Buffalo’s Living Wage Ordinance (LWO) provides that certain workers must be paid a living wage.³ The goal of the LWO is to make sure that employees working for the City of Buffalo and its contractors earn enough to keep their families out of poverty.⁴ Buffalo’s LWO was passed unanimously in 1999⁵ but was not implemented until 2002.⁶ The LWO was amended in 2002 and 2007.⁷

What is the Living Wage Rate and How is it Calculated?

The Living Wage Rate is designed to change every year with inflation.⁸ It is calculated on an hourly basis.⁹ The Living Wage Rate also differs depending on whether the covered employer provides health benefits.¹⁰ For 2012, the Living Wage Rate is \$10.71 with health benefits. For workers not receiving health benefits, the Living Wage Rate is \$12.02.¹¹



When Does the LWO apply?

The LWO applies to employees working under certain City contracts. In particular, the LWO applies to contracts under which “the City pays or receives more than \$50,000 per year with an employer who employs more than ten people.”¹² The LWO also applies to all workers employed directly by the City of Buffalo.¹³

Does the LWO Cover Part-Time Employees?

Yes. The LWO covers both part-time and seasonal employees.¹⁴

What Are Employers’ Duties Under the LWO?

Employers bidding on service contracts with the City of Buffalo must submit an “Application for Contract”¹⁵ agreeing to comply with the LWO.

If the employer wins the bid and does not meet an exemption, the employer and all its subcontractors must do the following 4 things:¹⁶

- (1) Pay all employees a living wage.¹⁷
- (2) File Quarterly Reports with the Buffalo Living Wage Commission.¹⁸
- (3) Post 2 copies of LWO or Employee Rights Poster at the workplace.¹⁹
- (4) Inform employees making less than \$12.00 per hour of their possible right to the Federal Earned Income Credit and make available forms required to secure advance Earned Income Credit payments from the employer.²⁰

“A few years ago my oldest daughter passed away. She was in Virginia with her mother. I wasn’t allowed any bereavement time. I drove down to Virginia, buried my daughter, and drove back so I could work on Monday. If I missed work, I would not get paid, and I risked getting suspended or fired. The living wage is a starting point, but there’s still a lot of unfair practices.”

- **Tim Johnson, Seasonal Sanitation Worker**



Are There Any Employer Exemptions from the LWO?

Yes. There are 3 employer exemptions from the LWO:²¹

- (1) If applying the LWO would violate state or federal law.²²
- (2) If the employer is employing youth under age 21 as part of a summer youth program, school-to-work program, or other related seasonal part-time work.²³
- (3) If the employer is a not-for-profit organization.²⁴

The exemptions are not automatic: the Common Council, upon request by the Mayor, may grant them.²⁵

What Remedies Are Available For Violations of the LWO?

If an employer violates the LWO, employees may file private lawsuits and/or file grievances with the Living Wage Commission.²⁶

Grievances can be made anonymously by calling the Living Wage Commission at (716) 852-4191, ext. 117.²⁷ Employees can also file grievances by filling out a Living Wage Grievance form, available on the City's website at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/Grievance2010.pdf.

Workers may also bring lawsuits against employers for violations of the LWO.

Employers also violate the LWO when they retaliate against employees for filing a lawsuit, grievance, or otherwise making a complaint regarding an employer's compliance with the LWO. A separate Retaliation Grievance Form is available on the City's website at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/RetalGrievance09.pdf.

What is the Buffalo Living Wage Commission?

The Buffalo Living Wage Commission (LWC) is a volunteer citizen commission that is empowered to oversee and enforce the LWO. The LWC was created by amendments to the LWO in 2002. The LWC's can investigate alleged violations of the LWO, hold hearings, and recommend sanctions.²⁸

What Powers Does the LWC Have to Address LWO Violations?

The LWC can investigate and hold hearings related to grievances and other allegations of non-compliance with the LWO.²⁹

“Since I began receiving a living wage, I am better able to provide for my family. The wage has allowed me to pay bills I couldn't afford before.”

**– Tim Johnson,
Seasonal Sanitation
Worker**

After a hearing, the LWC may recommend sanctions, including:

- (1) Requiring an employer to pay affected employees the wages they were owed under the LWO.
- (2) Suspending or terminating an employers' contract with the City.
- (3) Suspending an employer's ability to

contract with the City for up to three years.

- (4) Withholding payments to the employer that are due under the contract.

Which Employers Are Currently Covered by the LWO?

As already mentioned, besides the City of Buffalo itself, many employers that contract with the city are covered by the LWO. Currently, the following employers are covered by the LWO:³⁰

- Allied Waste, Inc.
- All Pro Parking
- Belmont Housing Resources for WNY
- Brand-On Services, Inc.
- Buffalo Civic Auto Ramps
- Buffalo Olmsted Parks Conservancy
- City of Buffalo
- Mercantile Adjustment Bureau, LLC
- Phoenix Frontier, Inc.
- Rural/Metro Medical Services

How Many Employees Are Benefiting from the LWO?

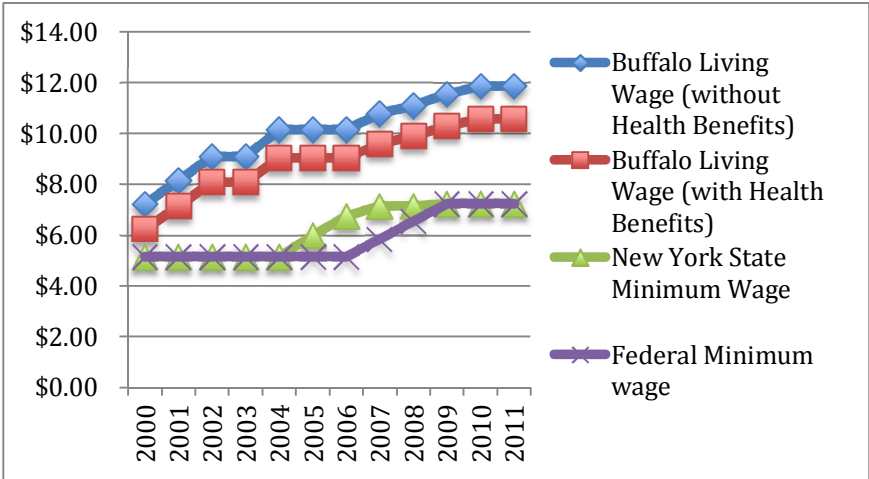
Complete data was not available at the time this Fact Sheet was drafted. However, data from several covered employers' most recent Quarterly Reports gives a snapshot of the workers covered who might otherwise received a lower wage.

| | |
|-------------------------------------|------------------------------------|
| Allied Waste Services..... | 23 covered employees ³¹ |
| All Pro Parking..... | 36 covered employees ³² |
| Belmont Housing Resources, Inc..... | 8 covered employees ³³ |
| Brand-On Services, Inc..... | 38 covered employees ³⁴ |
| Buffalo Civic Auto Ramps, Inc..... | 60 covered employees ³⁵ |

Subtotal.....165 covered employees

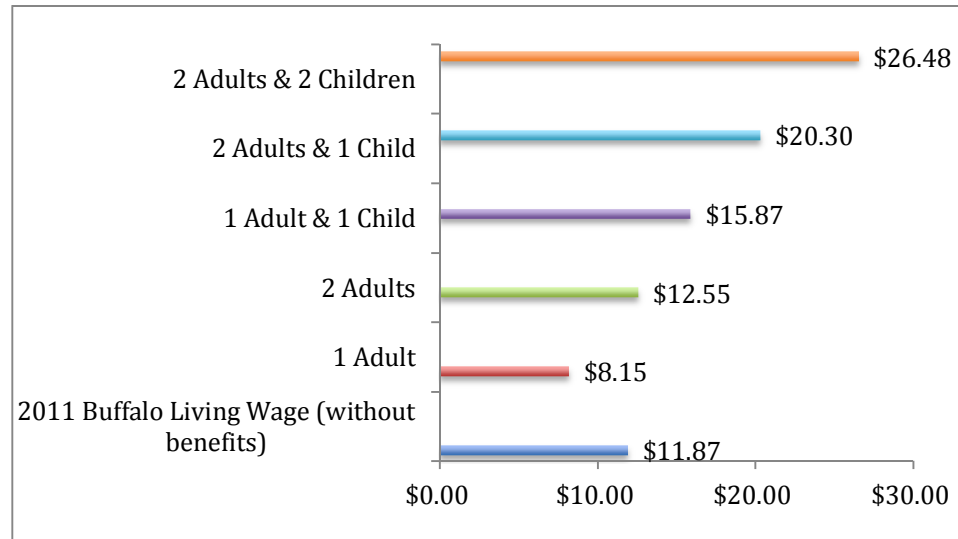
In addition to those listed above, some 70 City of Buffalo “seasonal” sanitation workers, and some 135 emergency medical technicians with Rural Metro Medical Services won a living wage after filing grievances with the Living Wage Commission; and roughly 157 City of Buffalo Crossing Guards won a living wage during contract negotiations.

Tracking the Buffalo Living Wage³⁶



The above chart tracks the wage rates under the LWO, the New York State minimum wage, and the federal minimum wage. As you can see, people covered by the LWO earn wages well above both the Federal and New York State minimum wages.

How Does Buffalo's Living Wage Stack Up to a "Real" Living Wage?³⁷



While the last chart indicates the important benefit that workers receive from the LWO, this chart, using a Living Wage Calculator developed by Penn State University, shows that Buffalo's Living Wage is only a starting point toward what at least some experts consider to be a realistic living wage. The above estimated wage rates all assume that the wage earners are sole providers and are working a full-time.³⁸ While the wage required by the LWO is higher than the Living Wage Calculator's wage for one adult living in Buffalo, things begin to look different as households increase in size. Two adults making the 2011 City of Buffalo living wage would make a total of \$23.74 per hour - \$2.74 less than the Living Wage Calculator's living wage for a household with two adults and two children.

An Interview with Timothy Johnson³⁹

For the last nine years, Tim Johnson has worked as a seasonal sanitation worker for the City of Buffalo. He lives on Buffalo's East Side. He is a life-long resident of Buffalo, except for two years in the Marines and ten years in the Navy. He is 51 years old, single, and has a young daughter.

Can you describe the nature of your job?

As a seasonal sanitation worker, I collect and properly dispose of garbage throughout the City. The usual hours are 6:30am to 1:00pm, but the shift hours can vary slightly. In any case, we work until we finish the route for that day. Sometimes in the winter the seasonal workers will be asked to come in and work in the afternoon shift instead of our normal shifts. This usually happens when the full-time (unionized) sanitation workers call in, like when the weather's really bad.

How did you become a seasonal sanitation worker?

About nine years ago I got the job through a program at the V.A. for homeless Veterans. I'm the only Veteran the City hired and kept through that program, and it's a great source of pride. I am a hard worker and I always try to be on time. I'm not perfect, but I believe in doing the job right, and I've always given this City 100%. I am very proud of my work.

What is the difference between seasonal and full-time sanitation workers?

Not much of a difference. We do the same exact work as the full-time guys. We're not unionized, though, and we don't receive the same pay. Until the City applied the living wage to us in 2008, we only made \$8.15 an hour. The City lays us off for one week a year to make us "seasonal," but we work all year round and do the same work as the full-time sanitation workers.

When did you first find out about the LWO?

I think it was around 2005. I found out about it when I first got involved with the Coalition for Economic Justice ("CEJ"). CEJ was at the McDonald's where the sanitation workers met before our shift. I was

getting a cup of coffee and was asked if I wanted to speak with Allison Duwe from CEJ about the living wage.



Can you talk about your involvement with CEJ?

Sure. I got involved with CEJ when I found out that the Living Wage Ordinance should cover the seasonal sanitation workers. We had to fight the City to get them to apply it to us, and we are still fighting the City for back pay. The living wage issue motivated me to get involved with CEJ, but I stick with them because I admire how they fight against unfair practices. I thought to myself, “If they can stand by me, then I can stand there with them.” I continue to work with CEJ because I know that if we don’t see this through, someone else is going to go through the same thing.

Can you talk about the difference, if any, the living wage has made in your day-to-day life?

Before the City gave us the living wage, I only made \$8.15 an hour. After the living wage I started making something like \$11.65 or \$11.85 an hour – almost a \$4.00 difference. I am grateful for the extra pay – it allows me

to provide better for my family, and helps me to pay extra bills I couldn't afford before.

At the same time, though, the living wage isn't sufficient. I don't receive any benefits, and I don't get any sick days or personal days. In the last three years I've maybe stayed home sick twice. If you don't come in, you risk being suspended or fired. A few years back I was hospitalized for a week because of my diabetes. The driver on my route would say things like, "if he's sick, he needs to find a new job." So, there's still a lot of unfairness even with the living wage.

Has receiving the living wage affected your opinion of your employer?

No – we're still fighting the City for the back pay we are owed under the LWO.

What do you think would make your job fairer?

First, employees who are doing the same work should get the same pay. I work side-by-side with the full-time sanitation workers, doing the same exact job. The only difference is that I am classified as seasonal.

Second, we need benefits, personal days and sick days. A few years ago my oldest daughter passed away. She was in Virginia with her mother. I wasn't allowed any bereavement time. I drove down to Virginia, buried my daughter, and drove back so I could work on Monday. If I missed work I would not get paid, and I risked getting suspended or fired. The living wage is a starting point, but there are still a lot of unfair practices.

What would you say to someone who thinks Buffalo's living wage is unnecessary?

They must be crazy. Working without being paid a living wage is modern day slavery. I have to provide for my family, and I struggle to do that even with the living wage.

¹ Robert Pollin, Mark Brenner, Jeannette Wicks-Lim, and Stephanie Luce, A MEASURE OF FAIRNESS: THE ECONOMICS OF LIVING WAGES IN THE UNITED STATES 21 (2008)(quoting Lawrence Glickman, A LIVING WAGE 66 (1997) (hereinafter “A MEASURE OF FAIRNESS”).

² A MEASURE OF FAIRNESS, *supra* note 1, at 21.

³ *Frequently Asked Questions About the Living Wage Ordinance*, October 20, 2010, available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/FAQ10.pdf (last visited March 18, 2012).

⁴ *Id.*

⁵ *Id.*

⁶ Sam Magavern, personal communication, March 23, 2012.

⁷ *Frequently Asked Questions About the Living Wage Ordinance*, *supra* note 10.

⁸ City of Buffalo Living Wage Ordinance, § 96-19(D), available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/living%20wage%20ordinance%203-07.pdf (last visited March 18, 2012). “Beginning in 2008, the Living Wage rate will change automatically each January 1 based on inflation. The rate will rise to reflect the inflation in the year preceding the prior year, as measured by the Department of Labor’s Consumer Price Index for all urban consumers (CPI-U). For example, the rate for 2012 will be based on the average inflation in 2010. If there was no inflation in the year preceding the prior year, then the rate remains the same.” *Frequently Asked Questions About the Living Wage Ordinance*, *supra* note 10.

⁹ City of Buffalo Living Wage Ordinance, § 96-19(D), available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/living%20wage%20ordinance%203-07.pdf (last visited March 18, 2012).

¹⁰ *Id.*

¹¹ Sam Magavern, personal communication, March 23, 2012. As of March 28, 2012, the City of Buffalo has not updated the Living Wage Ordinance webpage to reflect the 2012 living wage rate.

¹² *Frequently Asked Questions About the Living Wage Ordinance*, *supra* note 10. If the LWO applies to a contract, then it applies to all subcontractors under that contract as well – even if the subcontractor employs less than ten people. *Id.* The LWO applies regardless of whether it is specifically referenced in a specific contract. *Id.*

¹³ *Id.*

¹⁴ *Id.* There are two employee exceptions: (1) the LWO does not apply to professional services like legal, architectural or engineering services; (2) the LWO does not apply to construction workers covered by state and federal prevailing wage laws

¹⁵ *See Application for Contract*, available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/ApplicationForContract2010.pdf (last visited March 18, 2012).

¹⁶ *Frequently Asked Questions About the Living Wage Ordinance*, *supra* note 10.

¹⁷ *Id.*

¹⁸ *Id.* *See also Quarterly Employer Report form*, available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/qtrly_report_form.pdf (last visited March 18, 2012).

¹⁹ *Id.* *See also Employee Rights Poster*, available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/Poster10.pdf (last visited March 18, 2012).

²⁰ *Id.*

²¹ City of Buffalo Living Wage Ordinance, § 96-19(H), available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/living%20wage%20ordinance%203-07.pdf (last visited March 18, 2012).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

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- ²⁵ *Frequently Asked Questions About the Living Wage Ordinance*, *supra* note 10.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.* The LWC has 9 members, each serving 3-year terms. One member each is selected by the Mayor, Common Council, the Cornell University School of Industrial Labor Relations, the Coalition of Black Trade Unionists, the Buffalo Niagara Partnership, the Western New York Labor Federation, and the Western New York Welfare Monitoring Task Force. Two members are selected by the Network of Religious Communities. *See also* City of Buffalo Living Wage Ordinance, City of Buffalo Living Wage Ordinance, § 96-19(G), available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/living%20wage%20ordinance3-07.pdf (last visited March 18, 2012).
- ²⁹ *Id.*
- ³⁰ *Covered Employers Contact Information 7/13/10*, received from the Buffalo Living Wage Commission.
- ³¹ Data derived from Allied Waste Services' Quarterly Employer Report for 10/1/11 – 12/31/11 (courtesy of the Buffalo Living Wage Commission).
- ³² Data derived from All Pro Parking, LLC's Quarterly Employer Report for 2nd Quarter of 2011 (courtesy of the Buffalo Living Wage Commission).
- ³³ Data derived from Belmont Housing Resources' Quarterly Employer Report for 7/1/11 – 9/1/11 (courtesy of the Buffalo Living Wage Commission).
- ³⁴ Data derived from Bran-On Services, Inc.'s Quarterly Employer Reports for 2010 & 2011 (courtesy of the Buffalo Living Wage Commission).
- ³⁵ Data derived from Buffalo Civic Auto Ramps, Inc.'s Quarterly Employer Report for 10/1/11 – 12/31/11 (courtesy of the Buffalo Living Wage Commission)
- ³⁶ Data for Buffalo Living Wage based on *History of Buffalo's Living Wage Hourly Rates*, available at http://www.city-buffalo.com/files/1_2_1/Living%20Wage%20Commission/2010WageRate.pdf (last visited March 18, 2012); Data for New York State Minimum Wage based on *History of Hourly Minimum Wage*, available at http://www.labor.ny.gov/stats/minimum_wage.asp (last visited March 18, 2012); Data for Federal Minimum Wage based on *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938-2009*, available at <http://www.dol.gov/whd/minwage/chart.htm> (last visited March 18, 2012).
- ³⁷ Estimated living wage data derived from *Living Wage Calculation for Buffalo city, Erie County, New York*, Poverty in America: Living Wage Calculator, available at <http://www.livingwage.geog.psu.edu/places/3602911000> (last visited March 18, 2012).
- ³⁸ *Id.*
- ³⁹ Timothy Johnson, Personal Communication, March 23, 2012.

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