



# *Milwaukee County*

Office of the Comptroller

Audit Services Division

Jennifer Folliard, Director of Audits

**Date:** September 28, 2018  
**To:** Supervisor Theodore Lipscomb, Sr.  
**From:** Jennifer Folliard, Director of Audits  
**Subject:** Status Report - Minimum Wage Ordinance Memo (File No. 18-50)

## **Background**

In March 2014, the Milwaukee County Board of Supervisors created Chapter 111 of the Milwaukee County Code of Ordinances which established a Minimum Wage Ordinance (MWO). Chapter 111 applies to both County employees and certain contractors doing business with Milwaukee County. Chapter 111 provides the framework for County departments to follow when contracting for services covered by the MWO and for subsequent contract monitoring.

Our office issued a memo that was provided to the Committee on Finance and Audit in December of 2017 which was a three year review of the Minimum Wage program. The associated resolution indicating concurrence with the report recommendations was adopted by the Committee on Finance and Audit at its meeting in January 2018.

Subsequent to the adoption of the resolution, on April 17, 2018, 2017 Wisconsin Act 327, based upon Assembly Bill 748 was signed and became effective after publication on April 18, 2018. It repealed Wis. Stat. 104.001(3), which permitted a local government (county, city, village or town) to enact and enforce ordinances mandating a minimum wage for its own employees and employees performing work under a contract for provision of services or funded by financial assistance from the local governmental entity. Act 327 prohibits Milwaukee County from entering into any new contracts requiring compliance with the minimum wage. It does not negate existing contracts with that requirement.

A memo from the Office of Corporation Counsel explaining the legislation and its implementation at Milwaukee County is attached to this memo as Exhibit A.

This information may also be found at Audit Services Division's web page which is listed below.

<https://county.milwaukee.gov/EN/Comptroller/Audit-Services>

After the passage of Act 327 in March of 2018, the Director of Audits reconvened the MWO workgroup to discuss the impact of the new legislation, including on the adopted audit recommendations. The workgroup was originally established with the creation of Chapter 111. The workgroup discussed the inability to implement many of the recommendations contained in the original memo from Audit regarding the MWO since many of the changes would require the County Board to adopt modifications to Chapter 111. The Office of Corporation Council expressed a concern that doing so could invalidate the entire ordinance due to the recently enacted state prohibition.

However, since any existing contract that included compliance with Chapter 111 would continue to require compliance until the end of the contract, we compiled and reviewed payroll data from October of 2017 to June of 2018. We found:

- There continues to be confusion regarding which rates apply to which contracts with some vendors listing a higher rate on their payroll records than they are obligated to pay.
- Vendors listing a minimum wage rate that does not match the required rate for Milwaukee County although it was higher than the required rate.
- Two instances of vendors paying employees below the minimum wage. For one vendor the error had already been identified by the vendor and back payment was being processed for the one employee out of a total of 160 employees. For another vendor it was 12 out of 25 employees. This vendor was contacted regarding the discrepancy and is in the process of issuing back pay checks to the employees due to the underpayment relative to the required minimum wage under its contract.

While Audit will continue to provide a review of compliance with minimum wage and inform the County Board of its findings, contract managers in departments should be responsible for ensuring that all contractors comply with the conditions contained within their contracts and that vendors are aware of the appropriate minimum wage to pay their employees. We have contacted departments to alert them to any vendor with incorrect minimum wage rates on payroll records.

Recommendations applicability

Of the 18 recommendations adopted, all but three require modification to Chapter 111. The remaining three items were:

- The Director of Audits to reestablish the MWO workgroup to explore changes to Chapter 111. This recommendation has been completed.
- The designation of a county department to be responsible for an annual notification of the increase to the minimum wage should be established. On January 9, 2018 we notified the Department of Administrative Services of the increase to the minimum wage based upon County Board File No. 16-609 and on March 1, 2018 we notified the Department of Administrative Services of the increase in the minimum wage based upon the DHHS poverty rates. The Department of Administrative Services then distributed the documents to its listing of county contractors.
- The final recommendation that does not require County Board action was the drafting of a policy and procedure for the annual implementation of the minimum wage for County employees. Act 327 requires that Chapter 111 automatic wage increases for County employees cease which negates the need for a policy and procedure to be drafted.

Existing compliance with Chapter 111 from October of 2017 to June of 2018

While the new state legislation effectively ends any new contracts to require compliance with Chapter 111, we have continued to require submittal of payroll information to our office for those County contracts which contained a minimum wage requirement prior to the passage of the new state legislation.

There are currently 16 contracts that require payroll submittal. Audit Services has received payroll data for all 16 contracts. The table below lists the contracts.

<b>Active MWO Contracts with Type of Service and Average Number of Total Employees per Month</b>			
<b>Vendor</b>	<b>Department</b>	<b>Type of Service</b>	<b>Average Total No. of Employees per Month</b>
ABM Industry Groups	DAS	Housekeeping	46.0
Allied Barton - Coggs	DAS	Security	12.3
WCS – Day Reporting Center	HOC	Purchase of Service	10.0
Justice Point	Pre Trial Services	Purchase of Service	82.0
G4S	Sheriff	Secure Transportation	35.3
Interflight Parking	Airport	Concession - GMIA parking	81.0
H.S.S. Inc.	Airport	Security	25.0
Service Systems Associates	Zoo	Concession	7.7
Aramark	HOC	Food Services	19.3
WCS	Pre Trial Services	Purchase of Service	13.0
Mid America MCTS	MCTS	Housekeeping	14.0
First Transit	MCTS	Paratransit Transportation	68.7
Transit Express	MCTS	Paratransit Transportation	161.0
Zimmerman	MCTS	Printing Services	15.3
Allied Barton - MCTS	MCTS	Security	39.0
Personnel Specialists	Countywide	Temporary Help	57.3
<b>TOTAL</b>			<b>686.9</b>

Calculation of the Minimum Wage Ordinance Rates

In 2014 the Minimum Wage Ordinance designated the minimum wage for Milwaukee County as equal to 100% of the national poverty income level for a family of four as established annually by the U.S. Department of Health and Human Services. The Milwaukee County Minimum Wage hourly rate is determined by dividing the annual income by 2,080. This rate is currently in effect for any contract executed prior to November 3, 2016.

County Board File No. 16-609 approved on November 3, 2016 made two modifications to the Minimum Wage Ordinance. First was the alteration of the effective date for concession contracts at the Airport from January 1, 2017 to November 3, 2016. In addition the Ordinance changed the methodology for the calculation of the Milwaukee County Minimum Wage to fixed rates established per year until January 31, 2022 for any new contracts. Effective January 31, 2022, and every January 31 thereafter, the rate shall be determined by the Department of Administrative Services, increased

to reflect the rate of inflation for the previous calendar year, as calculated to the nearest cent, provided that in no case shall the wage be set at a level below the wage for the previous year.

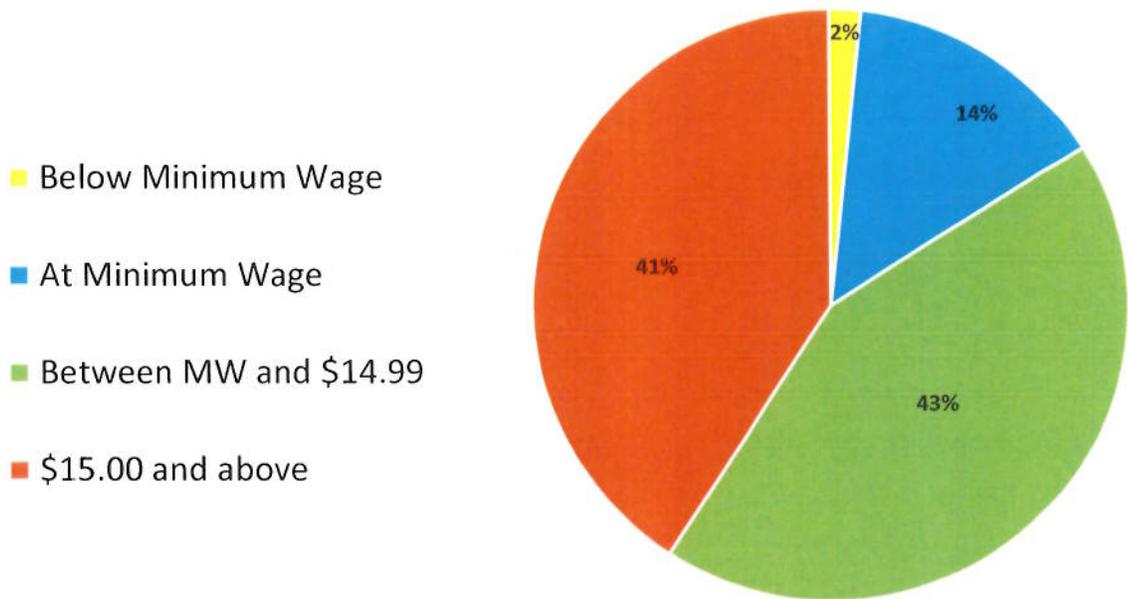
Minimum Wage Rates for Milwaukee County Contracts Before and After November 3, 2016				
	MW rates for contract executed BEFORE November 3, 2016		MW rates for contract executed ON or AFTER November 3, 2016	
Year	Effective Date	Hourly Rate	Effective Date	Hourly Rate
2014	6/1/2014	\$11.47	N/A	N/A
2015	3/1/2015	\$11.66	N/A	N/A
2016	3/1/2016	\$11.68	11/3/2016	\$11.68
2017	3/1/2017	\$11.82	1/1/2017	\$12.35
2018	3/1/2018	\$12.07	1/1/2018	\$13.01
2019	3/1/2019	Unknown	1/1/2019	\$13.67
2020	3/1/2020	Unknown	1/1/2020	\$14.34
2021	3/1/2021	Unknown	1/1/2021	\$15.00
2019 and beyond unknown until publication of US DHHS poverty rates			Beyond 2021 unknown until rate set by DAS	

Source: Hourly rates were calculated by dividing the national poverty income level for a family of four by 2,080 hours. The U.S. Department of Human Services establishes the national poverty income levels annually. Hourly rates under current legislation per County Ordinances. Calculations by Audit Services Division.

An unintended and confusing side effect of the modifications contained in File No. 16-609 to the Minimum Wage Ordinance has been the need to manage the Minimum Wage Ordinance contracts under two different rate structures. This dual wage rate structure requires departmental contract managers and vendors to be cognizant of which wage structure is in effect for their contracts. We continue to see confusion regarding which rate applies to which contract.

We reviewed the payroll data for employees over a nine month period and found that the majority of staff, or 84 percent, earned above the required minimum wage while 14 percent earned the minimum wage. As stated earlier we found employees earning less than the minimum wage which comprised 2 percent of all employees over the review period.

Our review of payroll data found that 14% of employees are paid the required Minimum Wage while 84% are paid above the Minimum Wage.



We also examined the payroll data by service area to show any trends in payroll. The following table depicts the split of employee wages by: below minimum wage, at minimum wage, between minimum wage and \$15.00 and wages in excess of \$15.00. The areas with the most employees at or below the minimum wage were housekeeping, parking services at the airport and security at the airport.

We focused on this type of analysis in our prior report as one of the recommendations was to explore defining the contracts that required compliance with the minimum wage as those areas with workers at or just above minimum wage rather than including contracts where market rates for employees are already higher than the minimum wage. In addition, we have included data delineating employees above the \$15.00 amount as this is the final fixed rate that was established by 2021 in County Board File No. 16-609.



This status report is informational and due to the continued monitoring of contracts with minimum wage requirement, we plan to provide a status report in September 2019.

*Jennifer L. Folliard*

Jennifer L. Folliard

JLF/MRP

- cc: Scott B. Manske, CPA, Milwaukee County Comptroller
- Milwaukee County Board of Supervisors
- Chris Abele, Milwaukee County Executive
- Richard Schmidt, Sheriff, Milwaukee County Sheriff's Department
- John Barrett, Clerk of Courts
- Teig Whaley-Smith, Director, Department of Administrative Services

Margaret Daun, Corporation Counsel, Office of Corporation Counsel  
Kelly Bablitch, Chief of Staff, County Board Staff  
Raisa Koltun, Chief of Staff, Milwaukee County Executive  
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Dan Boehm, Director, MCTS  
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Stephen Cady, Research & Policy Director, Office of the Comptroller  
Janelle Jensen, Legislative Services Division Manager, County Clerk's Office  
Members, Milwaukee County Minimum Wage Workgroup



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**DATE:** June 28, 2018

**TO:** Interested Parties

**FROM:** Office of Corporation Counsel

**SUBJECT:** Advisory Legal Memorandum:  
Impact of Repeal of Minimum Wage Law on MCGO Chapter 111

### I. Act 327 - Background

This memorandum addresses the impact of 2017 Wisconsin Act 327 on Milwaukee County General Ordinance Chapter 111 and compliance with that revised state law. On April 16, 2018, Governor Scott Walker signed Act 327 into law, based upon Assembly Bill 748. Act 327 became effective on April 18, 2018, the day after its April 17, 2018 publication. It repealed Wis. Stat. § 104.001(3), which had permitted a local governmental entity (county, city, village or town) to enact and enforce an ordinance mandating a minimum wage for 3 classes of individuals: 1) the local governmental entity's own employees; 2) employees performing work under a contract for services to the local governmental entity; and 3) employees performing work funded by financial assistance from the local governmental entity. Here is the relevant statute, with the repealed provision highlighted and stricken:

#### **104.001 Statewide concern; uniformity.**

(1) The legislature finds that the provision of a minimum wage that is uniform throughout the state is a matter of statewide concern and that the enactment of a minimum wage ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this chapter. Therefore, this chapter shall be construed as an enactment of statewide concern for the purpose of providing a minimum wage that is uniform throughout the state.

(2) A city, village, town, or county may not enact and administer an ordinance establishing a minimum wage. Any city, village, town, or county minimum wage ordinance that is in effect on June 16, 2005, is void.

~~(3) This section does not affect an ordinance that, subject to s. 66.0903, requires an employee of a county, city, village, or town, an employee who performs work under a contract for the provision of services to a county, city, village, or town, or an employee who performs work that is funded by financial assistance from a~~

~~county, city, village, or town, to be paid at a minimum wage rate specified in the ordinance.~~

## II. Act 327's Impact on MCGO Chapter 111

### A. New Agreements

Post-Act 327, Milwaukee County cannot implement Chapter 111's minimum wage provisions in new contracts, leases or concession agreements, or economic development financial assistance projects (of any value). Specifically, the prohibition applies to the following MCGO Chapter 111 applications:

- a) A service contract as defined in MCGO 32.20(17), or an agreement to provide personal care and supportive home care to persons with disabilities or the frail elderly provided by agencies that exclusively contract with Milwaukee County, involving an amount greater than or equal to twenty thousand dollars (\$20,000.00); and
- b) A lease agreement involving county funding or a public asset involving an amount greater than or equal to twenty thousand dollars (\$20,000.00); and
- c) A concession agreement involving an amount greater than or equal to twenty-thousand dollars (\$20,000.00); and
- d) Economic development financial assistance involving an amount of financial assistance from the county greater than or equal to one million dollars (\$1,000,000.00).

See MCGO 1.11.01. The ordinance contains detailed definitions for these agreements at MCGO 111.02. The ordinance in its entirety can be found at this link:

[https://library.municode.com/wi/milwaukee\\_county/codes/code\\_of\\_ordinances?nodeId=MICOCOGI-FORVOII\\_CHI11MIWA](https://library.municode.com/wi/milwaukee_county/codes/code_of_ordinances?nodeId=MICOCOGI-FORVOII_CHI11MIWA)

### B. Existing Agreements

Contracts pre-dating Act 327's enactment are binding on the parties and not subject to the Act's minimum wage prohibition, despite inclusion of terms for an annual escalator of the minimum wage under MCGO Chapter 111. Ultimately, in entering into these agreements, the parties struck a deal that factored that annual uptick into the overall pricing.

Wisconsin contract law states that "[t]he lodestar of contract interpretation is the intent of the parties." *Huml v. Vlazny*, 2006 WI 87, ¶ 52, 293 Wis. 2d 169, 716 N.W.2d 807. "In ascertaining the intent of the parties, contract terms should be given their plain or ordinary meaning." *Id.* "If the contract is unambiguous, [the court's] attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence." *Id.*

Therefore, it is not required that pre-Act 327 contracts be renegotiated. Their agreed-upon terms continue for the duration of the contract and conclude with the termination date. The same holds true for contracts with automatic extensions for one or multiple years, but not for a contract containing a clause for possible renewal.

Nonetheless, the parties may *mutually* decide to renegotiate the contract to remove the minimum wage provisions and the related impact on contract pricing. And some contracts may already contain provisions for renegotiation based upon potential changes in the law.

### C. Milwaukee County Employees

MCGO Chapter 111 also raised wages for certain Milwaukee County employees earning less than the ordinance's established rate at its March 2011 inception. MCGO 111.03(1) describes the employees directly impacted by the ordinance and those exempted from it. Impacted employee's wages are also subject to an annual increase by the Comptroller's payroll division pursuant to section MCGO 111.02(e).

Act 327 does not (and could not) require rescission of wage increases implemented before its enactment. But it does require that Chapter 111 wage increases cease post-Act 327. Practically speaking, that means the payroll division cannot implement the wage escalator on January 1, 2019 going forward. Milwaukee County may of course increase wages for other reasons unrelated to the repealed minimum wage law and now defunct minimum wage ordinance.

### Questions?

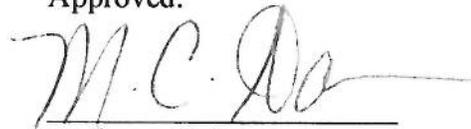
Questions about Act 327 and its impact on particular agreements may be directed to the Office of Corporation Counsel or the Department of Administration Procurement Division.

Respectfully submitted:



Colleen Foley  
Deputy Corporation Counsel

Approved:



Margaret C. Daun  
Corporation Counsel