Frequently Asked Questions

UC Fair Wage/Fair Work (FW) Plan (As of 12/15/17)

Red highlighted questions are new since 5/9/17

Existing Agreements; Renewals and Extensions

Q: If we have an agreement in place, and the agreement will extend past the 10/1/15 effective date of the FW plan, do we have to amend the agreement to add FW provisions?

A: No. Unless an agreement entered into before 10/1/15 is being amended or renewed/extended, FW will not apply to it.

Q: Will campuses need to amend existing agreements that fall under the FW provision? If so, must we amend all open agreements or is there a date that would be applicable or as they come due?

A: No. FW only applies to agreements that are entered into or amended/extended on or after 10/1/15.

Q: From time to time, departments will have work done and submit an invoice for a one time engagement w/o an agreement in place that upon review is an FW/FW scope. Are we under any obligation to go back and try to make sure they were paid FW/FW rates? In those circumstances, we generally just pay the invoice and never write up an agreement.

A: All contracts for FW Services must have the FW provision. This is a problem that goes beyond FW compliance – not having a contract (even at the bare minimum, a PO with the T&Cs).

When a Supplier Won’t Agree to the Fair Wage Provision

Q: One of our suppliers is arguing that they currently pay new hires with little experience well above the state and federal minimum wage. The supplier says that paying the UC Fair Wage would cause it to increase its entire pay scale company-wide, increasing payroll substantially. Because this supplier provides supplementary staffing services, we provided the supplier with our template amendment covering FW and PPACA. The supplier refused to sign the amendment. How do we handle these situations?

A: When FW services are being provided, BUS-43 requires a provision in the contract substantially in the form of our T&Cs FW Article. Any exceptions must be approved by the appropriate senior procurement officer. Assuming that the appropriate officer approves an exception to the FW plan, the location would then address the PPACA issue. If the supplier will agree to the PPACA provision, provide an agreement/amendment with the PPACA language but not the FW language. Because BUS-43 does not require a policy exception to waive the PPACA provision, the location may make a business decision to waive the PPACA provision; however, we recommend that waivers be granted rarely because there is considerable legal risk in not including a PPACA provision in contracts with suppliers of temporary or supplementary staffing.
Definition of “Working Conditions”

Q: What language can we give to a Supplier explaining what is meant by the “working conditions” reference in the FW Article?

A: The FW Article requires the supplier to warrant that it is in compliance with applicable federal, state and local working conditions requirements. Such requirements may vary by the size of the supplier, the type of services being provided, and the location at which services are provided, but may include the following (many of which are captured in Articles 11, 12 and 14 of the Terms and Conditions of Purchase):

- Wage and hours requirements
- Workplace health and safety requirements
- Equal opportunity/affirmative action requirements

Services Provided at a UC Location (which can also be out of state or international)

Q: Does FW apply to The Regents as tenant where the landlord is providing the services to us as part of the rent (janitorial, repairs and maintenance, etc.)? We may be one of many tenants in a building.

A: Yes. FW applies to services to be performed for UC at one or more UC Locations (defined as any location owned or leased by UC). Due to the provisions in the lease, the landlord (either directly or indirectly) is performing services for UC at a UC location. However, the fact that UC is one of many tenants may make it difficult for UC to ensure that the service providers’ employees are paid at least the UC Fair Wage. In such case, the location would need to seek an exception to policy.

Q: What if UC rents space and housekeeping is included as part of the rent for leased office space? UC’s contract is not with the housekeeping/maintenance supplier, but with the building itself.

A: See answer immediately above.

Q: Does FW apply to the workers UC hires to perform services on non-UC land that is subject to a UC land use agreement?

A: Yes

Q: Does FW apply to our third party property management company for the companies they hire to provide services to buildings that we own off-campus?

A: Yes

Q: Does FW apply to The Regents as lessor for the cafes on campus operated by 3rd party tenants, such as the cafes at the law school, business school?
A: Yes. FW applies to services that UC itself has historically performed or could perform at one or more UC Locations. Therefore, cafes and fast food tenants are required to pay their employees the UC Fair Wage. A provision to this effect must be included in the lease, or an exception to policy obtained. Obtain sample language from your facilities department.

Q: Does FW apply to ambulances that transport patients to and from the hospital?

A: FW applies to Supplier employees for whom the majority of the employee’s workday is spent transporting patients to and from UC medical facilities.

Q: Does FW apply to catering? Does it apply to wait staff provided by a caterer?

A: Yes.

Q: Does FW apply to services provided at an investment property owned by The Regents through the Office of Chief Investment Officer?

A: The answer to this question depends on how the investment property is used. While FW applies to services provided at any location owned or leased by UC, there is an exception for “endowment or investment property where the purpose is to generate income from the general public, except to the extent such property is used by the University in furtherance of its mission.” By way of example, FW may not apply to an office building used only by non-UC tenants, but could apply if the investment property provided off-campus student housing.

Q: FW/FW work relates to work that is done on-site, but if a company has support staff/office workers/overhead do those people need to be paid FW/FW or because they are not on site they can be paid other rates?

A: FW only applies to the workers that are performing services at a UC location.

Employees working less than 20 hours/week

Q: Is a third-party lessee required to pay FW to its employees who work less than 20 hours/week?

A: UC’s FW plan requires that Fair Wage/Fair Work Services include all services to be performed for the University at one or more UC Locations. There are some exclusions, which do not apply here. A UC Location is any location owned or leased by UC. There is no exclusion for lessee employees who work less than 20 hours/week. This includes UC students that are employed by the lessee.

Q: Do the service contractors have to provide at least 20 hours of service per week to fall under the FW plan?

A: The 20 hours/week threshold is only applicable to UC employees. The Fair Wage/Fair Work policy has no de Minimis threshold below which a supplier need not pay the UC Fair Wage to its employees providing Fair Wage/Fair Work Services at a UC Location. If the application of the plan presents problems in a particular circumstance, an exception may be requested.
**Extramural Agreements**

**Q:** How does Procurement determine whether there is an extramural agreement with sponsor-mandated terms?

**A:** The end user needs to tell Procurement that there is extramural funding with mandated terms. Otherwise, FW will apply.

**Which Supplier Employees and Sub-Suppliers Must be Paid Fair Wage**

**Q:** How do we handle Suppliers that use solely sub-contractors (not employees) to provide services to UC?

**A:** Fair Wage would flow down to the sub-contractors. Article 1 of the T&Cs of Purchase says, “As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier.” Therefore, the sub-suppliers must pay their employees the UC Fair Wage, and adhere to applicable working conditions requirements. See also the Q&A below concerning Audit Certifications and sub-suppliers.

**Q:** Does our FW plan require the supplier’s employees to be paid the UC Fair Wage 100% of the time, or just while working on UC business?

**A:** The supplier may pay the UC Fair Wage only to the employees providing services to UC, for the hours they provide UC with those services. The supplier would be well advised to document this arrangement, as it will be needed in connection with annual and interim audits.

**Q:** Would UC suppliers whose workers are developmentally disabled be required to pay FW?

**A:** Yes. If the payment of UC Fair Wage is problematic, the location may wish to request an exception. Other laws (such as laws regarding federal and state minimum wage) make exceptions in order to support programs such as Regional Centers.

**Q:** How does FW impact job training programs and internships? Is there any exemption for these?

**A:** There is not an exemption for these programs (though we understand there is such an exemption for Prevailing Wage and minimum wage purposes). In order not to pay the UC Fair Wage for workers in Job Training programs and internships, it would be necessary to apply for an exception.

**Q:** What if the services are only for 1 day and won't be repeated - one off job?

**A:** FW would apply. If problematic, the campus may want to consider requesting an exception.

**Q:** If a total spend is over $100K with the supplier, and there are several subsuppliers contracting under that contract at less than $100K, does FW/FW apply to the subsuppliers?

**A:** FW/FW applies to the supplier and to their subsuppliers (regardless of whether they contract at less than $100K) performing work on a UC site.
**Prevailing Wage Exception**

**Q:** If there is a specific classification of worker that we already know is paid above the UC Fair Wage, is it necessary to obtain a FW article from the supplier?

**A:** UC’s FW plan requires all suppliers of prevailing wage services to pay the UC Fair Wage, regardless of the Department of Industrial Relations’ wage schedule for specific worker classifications. Even in this case, however, the Supplier will need to agree to the Prevailing Wage and FW Articles in the Terms & Conditions of Purchase (though suppliers of prevailing wage services will not be subject to the annual audit requirement).

**Goods vs. Services**

**Q:** How will we manage the FW provision with goods that have an element of services, i.e. equipment or software maintenance? Will we need to create a separate PO for the service portion?

**A:** If we are purchasing both goods and services, it may be helpful (depending on the total contract amount) to use a separate PO or the purchase agreement to document whether the annual spend for services will exceed $100,000 (and therefore whether an annual audit certification will be required). Whether to document that services portion of the contract using a separate PO or a purchase agreement will depend on the individual facts.

**Q:** How do we handle orders with equipment maintenance that may be done at a UC location or remotely?

**A:** FW will not apply to the extent that equipment is shipped to the supplier for service, but will apply to the extent that service is performed at a UC location. It would be advisable to clarify in the contract whether maintenance will be done at a UC location or remotely.

**Q:** At the point-of-sale, we often have no idea whether maintenance will be done at a UC location or remotely. It depends on whether maintenance is required and, if so, to what extent. This is particularly true for warranty services, which may not have a cost associated with them at the outset. How should this be tracked, reported and/or identified as to whether services are in excess of $100K annually?

**A:** See response to FAQ above.

**Q:** What happens when a contract is valued at more than $100K but only a percentage of the services are performed on site?

**A:** If the contract is over $100K and performed on site, FW/FW applies regardless of what percentage of work is done on campus.

**Applicability to Professional Services**

**Q:** Will FW apply to professional services such as nursing, even if the supplier’s established rate is higher than the Fair Wage?
A: Yes. Such suppliers will need to agree to UC’s FW provision, provide an annual audit certification if the annual cost of services exceeds $100,000, and be subject to UC interim audits.

**Lack of Supplier Annual Certification**

Q: What happens if we don't get the annual audit certification from the supplier within 60 or 90 days of UC’s request for the certification?

A: The location should treat this situation as if the supplier had provided a certification with exceptions.

Q: What do we need to do if a supplier provides a certification with exceptions? If the period of performance has passed/goods have been delivered, and the vendor does not provide an independent audit certification (or they provide one with exceptions), what do we do?

A: Audit certifications with exceptions are the equivalent of not receiving a certification. The location should consider terminating the contract and obtaining services from a supplier that will comply with UC’s FW/FW program.

Q: Agreements over $100,000 are subject to audit, if an agreement is less than $100,000 and the supplier signs the agreement indicating that they agree to pay the FW/FW rate do we have any additional obligations to check and make sure they are in compliance after the fact?

A: No, but the FW provision provides that they are subject to UC spot checking their compliance.

**Period Being Certified**

Q: What is a year: calendar or anniversary date?

A: We calculate the annual periods using the anniversary date of the Agreement or PO.

**Supplier Works for Multiple UC Locations**

Q: What if the Supplier has agreements with five campuses; does the campus collect one or five annual audit certifications?

A: Practically speaking, five certifications may work best initially, since each agreement will have a different anniversary date. A more sustainable practice might be to supersede the individual agreements with a master services agreement with individual work orders, which could then allow a single certification that is tied to the master services agreement anniversary date.

**Storage of Audit Certifications**

Q: Where will we store the FW audit certifications? Will there be a central location that allow multiple campuses access?

A: That's up to each location. Initially the database will be local, but if there's a demand for a central database, that may be considered in the future.
**Partial Years**

**Q:** If contract starts October 1 and lasts 1 ½ years, would we get an annual certification for the last 6 months of the contract?

**A:** No. If there is any active contractual relationship with the supplier on the contract’s anniversary date, the annual certification should be obtained. Otherwise, no certification needs to be obtained. For example, if UC entered into an 18-month contract commencing on October 1, 2015, there would be no active contractual relationship on October 1, 2017 (the contract’s second anniversary date), and therefore the buyer would not be required to request an annual certification for the partial year (October 1, 2016 – April 1, 2017).

**Q:** In reference to the above answer, does the highlighted language mean that if the contract is not active on the annual anniversary date that the supplier does not need to provide an audit certification form? For example, if we enter into an agreement in August, which is in excess of $100K and has a period of performance of three months, and the supplier fully performs and we issue payment – the supplier does not need to provide an audit certification form?

**A:** In your example, the supplier does not need to provide an audit certification form as long as the contract has been fully performed before the anniversary date.

**Delivery Services**

**Q:** Would courier services (e.g. picking up and delivering payroll, lab samples, etc. between campuses or campus departments) be subject to FW?

**A:** Yes.

**Q:** What about other delivery services (e.g. pizza delivery)?

**A:** FW would only apply to contracts that UC enters into with the supplier. Pizza delivery of orders from students wouldn’t apply because UC would not have a contract with the supplier for those deliveries.

**FW FW Notices**

**Q:** To what dollar value does the FW notice apply?

**A:** There is no de Minimis amount in the FW Article, so posting of notices would be required in all situations unless an exception were approved.

**Q:** What do we communicate to small businesses that only have 1 to 2 people on payroll with no break room or a virtual office?

**A:** Since it would be physically impossible for the supplier to post the notice as anticipated in the FW Article, the supplier should distribute the notices individually to its employees (for instance, via email).
Questions from (and since) audit certification refresher training on 3/23/17

QUICK REFERENCE ON AUDIT CERTIFICATIONS

1. Certification required for services rendered (actual spend) over $100k
2. Certification required when the annual or single term ends. Even when the contract term is 3 years, if the first annual year exceeds $100k, a certification is needed after the first year, and subsequent years when spend exceeds $100k
3. Certification required on a single goods purchase ONLY if the services amount exceeds $100k
4. Certification is NOT required on UCOP Agreement vendors
5. Certification is NOT required if the agreement spans several years, the total is over the threshold, but the total amount divided by the term years does not exceed $100k per year
6. Certification is NOT required if the job is also subject to Prevailing Wage, and the PW rate for the job exceeds the FW/FW rate.

Q: Should we adjust our process for annual certifications, if we send the certification request more than 90 days after the anniversary date of the contract?

A: The FW provision in the T&Cs requires Supplier to furnish an annual audit certification within 90 days after the agreement’s anniversary date, and is not dependent on UC sending a reminder. Practically speaking, however, Supplier may not have initiated the certification process if it didn’t receive a reminder. So, although the location may request Supplier to furnish the annual certification less than 90 days after UC sends the reminder, Supplier may have operational difficulty in providing the certification within a shorter time frame.

Q: If a location has multiple POs with a Supplier but no purchase agreement, how should the location calculate the anniversary date?

A: The location has some choices on how to measure what spending falls within the one year period: 1) from the date of the first PO; 2) from the date of the PO that brings the total spend over the $100,000 threshold; 3) using a calendar year; or 4) using UC’s fiscal year. Whatever the location decides, it should be applied consistently and not for the purpose of evading FW requirements.

Q: What are the audit certification requirements if UC has filed a form PWC 100 in connection with the services?

A: In July 2016, the FW plan was amended to provide that suppliers of Prevailing Wage services would not be required to provide an annual audit certification, as long as the supplier agreed to a provision substantially in the form of the revised Prevailing Wage provision in the T&Cs (Article 24). This Article requires Supplier to agree to pay the UC Fair Wage to its employees providing services to UC, even if the Prevailing Wage rate is not at or above the UC Fair Wage. Most Prevailing Wage services are at or above the UC Fair Wage, with a key exception being landscaping services.

Q: Is microscope installation subject to FW/FW?

A: If the Services are provided at a UC Location, FW will apply.
Q: Does FW/FW apply to warranty and installation, if there is no charge associated with these services under the contract? If so, how would this be tracked and reported? How will we know if the services are in excess of $100K annually? We usually don’t know if/when warranty services are performed.

A: We recommend that contracts for goods and services delineate what amount is attributable to goods, and what amount is attributable to services, which will allow UC to determine whether an audit is required annually (assuming that the services fall within the definition of “Fair Wage/Fair Work Services”).

Q: Are performers subject to FW/FW, particularly one-time performances?

A: Yes.

Q: Do subcontracts need separate certifications?

A: In the case of services exceeding $100,000 in value annually, Supplier’s audit certification will cover its sub-suppliers. Supplier may want its sub-suppliers to provide some type of written attestation (or if the value of sub-supplier’s services to UC through Supplier exceeds $100,000 annually, an audit certification in the form UC developed) to Supplier’s auditor, to support the certification of Supplier’s auditor. Supplier would not provide this attestation to UC unless requested by UC. See also the Q&A above regarding Suppliers that use solely sub-contractors.

Q: How do we handle audit certifications with amended or renewed contracts?

A: Amended or renewed contracts should be handled the same as new contracts. If the contract is for FW services, it must include a provision substantially in the form of the FW Article of the T&Cs, or an exception to policy must be obtained. The date by which the audit certification must be obtained will be determined using the amendment/renewal date as the anniversary date.

Q: If UC contracts for services by piggybacking on contracts entered into by third party group purchasing organizations (GPOs), and those contracts would be subject to UC’s Fair Wage/Fair Work policy if UC were to contract directly for such services, must UC include a Fair Wage/Fair Work provision in the contract?

A: Yes. GPOs may be used to fulfill the requirement that UC competitively bid the services, but the GPO contract terms should be supplemented with all provisions that are required by UC policy or law. Please see the Contract Checklist on Procurement’s password-protected website at http://www.ucop.edu/procurement-services/mgmttrain/legal-compliance-resources.html for a list of those requirements. (Contact Andrea.Tung@ucop.edu if you need the username and password to the site).

Q: On page 9 of the 7/22/2016 FW FW Training slide deck, it mentions that FW/FW service requirements do not apply to ii) endowment or investment property where the purpose is to generate income from the general public, except to the extent such property is used by the University in furtherance of its mission.” Can you explain what situations this was intended for?
A: This exception was intended for situations where the Office of the Chief Investment Officer purchases property for UC’s endowments or UC’s retirement fund. In those cases, even though The Regents owns the property that the OCIO purchased, we would not require the tenants to pay Fair Wage unless the property was being used in furtherance of UC’s mission.

Q: At our campus, there is the occasional fundraiser where we wine and dine the high donor-types. If they actually spend over $100K for the catering piece (and venue set-up) and it is on UC property, is that subject to the audit certification?

A: Yes. FW applies to services furnished at a UC Location, unless an exception applies or a policy waiver has been obtained. If the services exceeded $100,000 annually, the audit certification requirement would apply.

Q: Are public entities that we do business with exempt from the FW/FW requirements (such as the Transit Joint Powers Authority)?

A: There is no express exemption for public entities in the FW policy. If the location believes an exception to policy would be appropriate in these circumstances, the appropriate official could be asked to consider an exception.

Q: Are owners of a business required to comply with the FW/FW requirements if they personally provided services to us rather than any employees?

A: There is no express exemption in such a case. If the location believes it is appropriate to make an exception because it would be impossible for an owner to attribute an hourly rate to herself, this can be proposed to the appropriate official.

Q: Does the above answer apply to the scenario where we are paying an individual as an independent contractor? If so, we are paying the individual directly. Is there a reason why we would need an independent auditor to certify how much we are paying?

A: A worker’s title or status is not necessarily determinative of an individual’s coverage by FWFW. What is determinative is whether the duties performed by the individual constitute Fair Wage/Fair Work Services. An individual who performs labor on a UC contract must be paid the applicable FW/FW rate for the time the work is performed, and furnish an annual audit certification if the work exceeds $100,000 annually, regardless of whether the individual holds a particular status such as owner, independent contractor or sole proprietor.

Q: What do we need to do now to IF we failed to notify a supplier of the FW/FW requirements when renewing/extending an agreement?

A: In this situation, the location would be out of compliance with the FW policy, as it required the FW language to be included in any contracts entered into or renewed after 10/1/2015, or for there to be a written exception to policy. So the location would need to develop a plan for bringing those contracts into compliance. The contract term and termination provisions should be reviewed. If the contract will
be up for renewal soon, the buyer can introduce the FW provision in connection with the renewal. If the contract is not up for renewal soon, it will be necessary to review all the circumstances so the buyer can use some leverage to require the supplier to agree to the FW provision (for instance: is there a termination for convenience provision, and/or could the business be awarded to other potential suppliers if the non-FW supplier refused to agree to a FW amendment to the agreement).

**Q:** Does making only an internal change (such as an FAU modification that is not sent to the supplier) require that the vendor comply with FW/FW requirements?

**A:** No. The FW program applies when contracts are amended or renewed (meaning, the supplier signs something). If the location only makes an internal change that affects which unit pays for the contract, this would not be considered an amendment or renewal.

**Exceptions**

**Q:** Can you provide additional guidance on the FW/FW exception for “orders that solely involve furnishing Goods”? Goods are defined as “equipment, materials, or supplies” in UC’s Terms and Conditions, does this include consumables?

**A:** BUS-43 has no definition for goods, but we should consider everything that we buy that is not a service, to be goods. That would include consumables.