

Frequently Asked Questions UC Fair Wage/Fair Work (FW/FW) Plan

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SECTION I: Fair Wage/Fair Work Application

A. Existing Agreements, Extramural Agreements, Renewals and Extensions

- 1. 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?**
No. Unless an agreement entered into before 10/1/15 is being amended or renewed/extended, FW will not apply to it.
- 2. 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?**
No. FW only applies to agreements that are entered into or amended/extended on or after 10/1/15.
- 3. 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.**
Yes. All services performed on a UC campus require the FW rates. You should never engage a service provider absent a service purchase order issued by your Procurement Department. In so doing the terms and conditions pertaining to FW/FW would automatically be included in the purchase order boilerplate.
- 4. How does Procurement determine whether there is an extramural agreement with sponsor-mandated terms?**
The end user needs to tell Procurement that there is extramural funding with mandated terms. Otherwise, FW will apply.
- 5. 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?**
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.

B. FW/FW Provision

- 6. 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?**

The UC Fair Wage only applies to "Fair Wage work", and would not require the supplier to increase its entire pay scale company-wide outside of the Fair Wage work being performed. 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 policy exception authority. Assuming that the appropriate policy exception authority approves an exception to the FW plan, the location would then address the PPACA issue.

- 7. What language can we give to a Supplier explaining what is meant by the "working conditions" reference in the FW Article?**

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

C. FW/FW Notice

- 8. To what dollar value does the FW notice apply?**

There is no minimum dollar amount in the FW Article. Posting of notices is required in all situations unless an exception is approved.

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

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).

D. Services Provided at a UC Location¹

QUICK REFERENCE ON SERVICES PROVIDED AT A UC LOCATION

FW/FW applies to:

- All work performed at a UC location
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- Ambulatory services for whom the majority of the employee's workday is spent transporting patients to and from UC medical facilities
- Wait staff provided by a caterer
- FW/FW **DOES NOT**

apply to:

- Support staff or office workers from a company who is doing work for UC but not being performed at a UC location
- When it is a one-time delivery for goods (e.g. pizza)

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

The answer to this question depends on how the investment property is used. While FW applies to services provided at any location owned 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.

¹ Please refer to <https://ucop.edu/real-estate-services/index.html> for any other location questions on the application of Fair Wage/Fair Work.

E. Delivery of Goods

QUICK REFERENCE ON DELIVERY OF GOODS

FW/FW applies:

- When goods are delivered AND set-up, installation, testing, or training is involved on a UC location (e.g. lab equipment, IT systems, catering). Note that furniture installation and set-up is subject to Prevailing Wage.
- To courier services that involve the moving of goods intra or inter-campus

FW/FW **DOES NOT** apply:

- When goods are delivered to various drop-off locations, regardless if freight is a separate line item or bundled within the cost
- When it is a one-time delivery for goods (e.g. pizza)

F. Employees working less than 20 hours/ week

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

Please refer to the FAQs posted on <https://ucop.edu/real-estate-services/index.html> for more information on how FW/FW is applied to locations leased by UC.

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

The 20 hours/week threshold is only applicable to UC employees. The Fair Wage/Fair Work policy has no minimum dollar 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.

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

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

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.

14. 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?

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 should document this arrangement, as it will be needed in connection with annual and interim audits.

15. Would UC suppliers whose workers are *developmentally disabled* be required to pay FW?

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.

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

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.

17. 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?

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.

18. Will FW apply to professional services or consultants, even if the supplier's established rate is higher than the Fair Wage?

No. The suppliers for professional services/consultant contracts (where hourly wage rates are stipulated) will be able to pre-certify that they will NOT employ anyone at a UC location at a lesser rate. This will exempt certain high-wage suppliers from the mandatory annual independent verification requirements. The Fair Wage Fair Work annual independent verification requirement does not extend to contracts for professional services or consulting for which pre-certification has been approved by UC (see [FW/FW section on UC Procurement website](#) for exemption form). Please see the <https://policy.ucop.edu/doc/3220485/BFB-BUS-43> for the definition of professional services and consultants.

Exemption forms can either be collected when the agreement is signed, purchase order is generated, or when the Supplier reaches \$100,000 in spend in the preceding 12 months.

19. 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?

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 ProcurementAdmin@ucop.edu if you need the username and password to the site.

H. Prevailing Wage Exception

20. If there is a specific classification of worker (as referred in the DIR wage schedule) that we

already know is paid above the UC Fair Wage, is it necessary to include a FW article from the supplier?

Unless UC notifies Supplier that the Services are not subject to prevailing wage requirements, Supplier will comply, and will ensure that all sub-suppliers comply, with California prevailing wage provisions. Notwithstanding the foregoing provisions, in every instance, Supplier will need to agree to the Prevailing Wage and FW Articles in the Terms & Conditions of Purchase pay not less than the UC Fair Wage (defined as \$15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC). However, suppliers of prevailing wage services will not be subject to the annual FW audit requirement

If a supplier is not subject to prevailing wage requirements, UC's FW plan requires all suppliers of prevailing wage services to pay the UC Fair Wage. For Services that exceed \$100,000 annually and are not subject to prevailing wage requirements, Supplier will, at Supplier's expense, provide an annual independent audit performed by Supplier's independent auditor or independent internal audit department in compliance with UC's required audit standards and procedures.

I. Goods vs. Services

21. 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?

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 verification 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.

22. How do we handle orders with equipment maintenance that may be done at a UC location or remotely?

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.

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

If the contract is over \$100K and performed on site, FW/FW applies regardless of what percentage of work is done on campus. However, the annual audit is only required if the value of the work performed on site exceeds \$100K per year. In these instances, the contract should make clear what proportion of the work will be performed at a UC location.

24. 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.

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”).

J. Exceptions

25. 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?

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.

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

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 Policy Exception Authority could be asked to consider an exception.

27. Are owners of a business and independent contractors required to comply with the FW/FW requirements if they personally provided services to us rather than any employees? Under this scenario, is the annual audit verification still required?

A worker’s title or status is not necessarily determinative of an individual’s coverage by FW/FW. What is determinative is whether the duties performed by the individual, and the location of said performance, 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 that the work is performed. However, if the individual is "self-employed" as an independent contractor, and invoices UC based on an hourly rate above the Fair Wage, he/she is exempt from the annual audit verification requirement. A worker’s title or status is not necessarily determinative of an individual’s coverage by FW/FW.

SECTION II: Audit Verifications

QUICK REFERENCE ON AUDIT VERIFICATIONS

Verification required:

- For services rendered (actual spend) over \$100k
- When the annual or single term ends. Even when the contract term is 3 years, if spend in the first 12 months exceeds \$100k, a verification is needed after the first year, and subsequent years when spend exceeds \$100k
- On a single goods purchase ONLY if the services amount exceeds \$100k

Verification is NOT required:

- On UCOP Agreement vendors
 - 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
1. Verification is NOT required if the job is also subject to Prevailing Wage, and the PW rate for the job exceeds the FW/FW rate.

K. Lack of Supplier Annual Verification

28. What do we need to do if a supplier provides a verification with exceptions or none at all? If the period of performance has passed/goods have been delivered, and the vendor does not provide an independent audit verification (or they provide one with exceptions), what do we do?

Audit verifications with exceptions are the equivalent of not receiving a verification. The location should consider terminating the contract and obtaining services from a supplier that will comply with UC's FW/FW program.

29. 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?

No, but the FW provision provides that they are subject to interim audits by UC.

L. Period Being Certified

30. What is a year: calendar or anniversary date?

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

31. If contract starts October 1 and lasts 1 ½ years, would we get an annual verification for the last 6 months of the contract?

No. If there is any active contractual relationship with the supplier on the contract's anniversary date, the annual verification should be obtained. Otherwise, no verification 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 verification for the partial year (October 1, 2016 – April 1, 2017).

32. If a contract is performed and completed before the anniversary date, and is in excess of \$100K, would the Supplier need to provide and audit verification form?

The supplier does not need to provide an audit verification form as long as the contract has been fully performed *before* the anniversary date.

M. Supplier Works for Multiple UC Locations

33. What if the Supplier has agreements with *five campuses*; does the campus collect one or five annual audit verifications?

All suppliers are required to provide an annual audit verification if the annual cost of services exceeds \$100,000. If there is a single agreement with a supplier that multiple campuses piggy-back on, a single annual audit verification can be completed.

If a single supplier has multiple separate agreements with campuses, the supplier should perform multiple annual audit verifications for each individual agreement.

N. Storage of Audit Verifications

34. Where will we *store* the FW audit verifications? Will there be a central location that allow multiple campuses access?

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.

O. Audit Verification Process

35. Should we adjust our process for annual verifications, if we send the verification request more than 90 days after the anniversary date of the contract?

The FW provision in the T&Cs requires Supplier to furnish an annual audit verification within 90 days after the agreement's anniversary date, and is not dependent on UC sending a reminder. For practical purposes, it's recommended that UC sends a reminder.

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

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
- 4) using UC's fiscal year

Whatever the location decides, it should be applied consistently and not for the purpose of evading FW requirements.

37. What are the audit verification requirements if UC has filed a form PWC 100 in connection with the services?

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 verification, 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.

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

In this situation, the location is 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. 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 is 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, all the circumstances should be reviewed so the buyer can use leverage requiring the supplier to agree to the FW provision (e.g. 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?).

P. When Audit Verifications are Required

39. Do subcontracts need separate verifications?

In the case of services exceeding \$100,000 in value annually, Supplier's audit verification 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 verification in the form UC developed) to Supplier's auditor, to support the verification of Supplier's auditor. Supplier would not provide this attestation to UC unless requested by UC.

40. How do we handle audit verifications with amended or renewed contracts?

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 verification must be obtained will be determined using the amendment/renewal date as the anniversary date.

41. 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 verification?

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 verification requirement would apply.