

**Fair Wage/Fair Work Plan Applicability
To Real Property Leased or Licensed To or By
The Regents of the University of California (UC)**

UC's Fair Wage/Fair Work Plan (Plan) establishes minimum wage levels for persons employed by or on behalf of UC and can be found at <http://universityofcalifornia.edu/press-room/uc-president-announces-15hour-minimum-wage>. The Plan applies to payment for work performed in a UC Location. UC locations are deemed to include leased and licensed space whether UC is the Landlord/Licensor or Tenant/Licensee of space, and land ground leased to or from UC, that fall within the guidelines outlined in Sections 1 and 2 below. These guidelines are effective May 1, 2016, as described in Section 5 below.

1. Space Leases and Licenses.

- A. **UC as Landlord or Licensor:** Where the tenant or licensee, in UC-owned or controlled space, provides a service or conducts a business that UC otherwise would provide or conduct, and the agreement is for a term of more than one year. Examples of services and businesses that UC typically provides or conducts include food service, bookstores, and recreational programs. Examples of services and businesses that UC does not typically provide or conduct, and therefore are typically not required to implement the Plan, include banking, dry cleaners, solar power generating facilities, and cell tower service.
- B. **UC as Tenant or Licensee:** Where UC as tenant or licensee effectively exercises, or has the power to exercise, control over the operations of a building for a term of more than one year (i.e., not in multitenant buildings where the building owner provides services to tenants including but not limited to UC).

2. Ground Leases.

- A. **UC as Ground Lessor:** Any building constructed on UC land pursuant to a ground lease or similar arrangement (e.g., Concession Agreement), where (i) UC leases back at least 50% of the space for the duration of the ground lease (or similar arrangement), or (ii) the building is constructed for a use that supports UC's mission and which could have been constructed and operated by UC (e.g., recreational facilities, student or faculty rental housing, and parking facilities).
- B. **UC as Ground Lessee:** Any building or other facility constructed by UC or for UC's use.

3. Services Retained by UC — The scenarios covered in Sections 1 and 2 above are in addition to, and not in lieu of, applicability of the Plan to any services covered by the Procurement guidelines (<http://ucop.edu/procurement-services/procurement-systems/fairwage-fairwork-ppaca.html>).

4. Exceptions to the Plan — The Plan does not apply to (i) endowment or investment property, except to the extent such property is used by UC in furtherance of its mission, or (ii) extramural agreements with sponsor-mandated terms, including, but not limited to, activities funded by federal contracts or grants.

In all other Leases and Licenses covered in Sections 1 and 2 above, the Vice Chancellor or Vice President responsible for activity in a UC Location as decision maker may make a hardship finding and grant an exception to the Plan in the following circumstances:

- (i) UC is unable to solicit a single acceptable proposal from a Tenant/Licensee/Ground Lessee, or

- (ii) the Plan imposes an irreconcilable impediment to entering into a real estate transaction in furtherance of UC's mission to the detriment of UC or its campus community.

The decision maker will document the conditions and rationale for their determination in writing and provide a copy to the Executive Director—Capital Asset Strategies.

5. **Applicable Date**— Beginning *May 1, 2016*, any Lease, License or Ground Lease described in Sections 1 and 2 above, for which UC has not then executed a term sheet, memorandum of understanding or letter of intent, or received responses to a Request for Proposals (RFP) shall be subject to the Plan.
6. **Compliance**—For any Lease, License or Ground Lease determined to be covered by the Plan in 1. or 2. above, the applicable agreement (e.g., lease, license, ground lease) shall include the provisions:
 - A. **Requirements**: An explicit requirement that the other party (e.g., lessee, licensee, landlord) shall: (i) comply with the Plan for all of their employees working more than 20 hours per week in premises covered by the applicable agreement, (ii) post a notice in the premises in all break rooms and other public notice areas which notice clearly references the Plan's applicability to the other party's employees and (iii) provide a certification on an annual basis that they have complied with the Plan as set forth in (i) and (ii) above.
 - B. **Audit Rights**: The applicable agreement shall further include provisions that (i) allow UC to audit the other party's compliance with the Plan and (ii) provides sufficient access to their records for this purpose while providing for appropriate security for such records.
 - C. **Remedies**: If the other party either (a) fails to provide the annual certification, or, upon audit, (b) is determined not to have materially complied with the Plan, then after appropriate notice and cure periods, the other party shall be deemed to be in default under the terms of the applicable agreement and UC shall be able to pursue appropriate remedies including, but not necessarily limited to, termination of the applicable agreement.

Questions on applicability of the Plan to UC real estate Leases and Licenses should be directed to the Executive Director—Capital Asset Strategies.

Frequently Asked Questions about the Fair Wage/Fair Work Plan (Plan)

Real Estate Questions:

1. What is meant by "UC.....controlled space" in Guideline 1. A.? *This is space (or land) which UC, as lessee through a lease, master lease or ground lease, effectively controls. Thus, if UC subleases, licenses, or assigns some or all of this "controlled space" to an unrelated third party, then that contractual relationship may be subject to the Plan.*
2. Does the Plan apply to properties owned or controlled by the Chief Investment Officer of UC? *No, as a rule the Plan does not apply to endowment or investment property, except to the extent such property is acquired and managed in a manner intended to directly serve a University-related purpose in furtherance of UC's mission. In other words, the CIO is managing such property in a substantially different manner than it would have had it acquired the property purely for investment purposes in order to directly support the UC's mission (e.g., the CIO "master leases" such property for a campus use).*
3. Are leases where the purpose is to generate income rather than support UC's mission covered by the Plan? *No, for example the Estancia Hotel and Conference Center near UCSD and UCB's 55 Laguna rental housing ground leases provide ongoing and prepaid income respectively but their functions do not directly support UC's mission. If sold rather than ground leased, there would be no opportunity to impose the Plan on these private developments which do not further UC's mission. Similarly, unlike a space lease for a café on campus, a lease for a café in an off campus location (e.g., the ground floor of UCLA's 10950 Wilshire Building), which café business is intended to serve the general public, and not specifically or largely for members of the UC community, would not be subject to the Plan. These income producing uses are not businesses that UC might otherwise choose to develop and thus fall outside the principle that guides when the Plan should apply.*
4. Are privatized developments of auxiliary uses on campus ground leases subject to conformance with the Plan? *As with space leases, it depends on whether the use is one that UC would develop in the ordinary course of its business. Thus, student rental housing and parking structures which UC commonly develops would be subject to the Plan requirements.*
5. When is the Plan applicable to existing Leases and Licenses, options to renew these agreements, and renewals or expansions when there are no further option rights? *The Plan would not apply to any preexisting contract or right to renew or expand the area covered by that contract. In other words, the Plan would not be applied retroactively (see Guideline 5. Applicable Date). A renewal of an existing Lease or License negotiated after the Applicable Date, however, or an expansion increasing the premises area by more than 50% during an existing term (as that term may be extended by option) negotiated after the Applicable Date would require that the Plan would be applied to a preexisting contract.*
6. Does the Plan apply to properties owned or leased out of state/country? *No, only activities within the state of California that fall within these Guidelines are covered by the Plan (for*

example, new Casa de California [Mexico City] and UCDC [Washington D.C.] initiatives that would be covered by these Guidelines for a project in California would not be covered).

7. Does the Plan apply to people/entities doing work on UC property under an easement or license when the work will benefit UC but UC is not contracting for the work, e.g., SANDAG/CalTrans, water districts, solar power providers, cell tower operators? *As in 4. above, it depends on whether the use is one that UC would develop in the ordinary course of its business. Thus, a public transportation or water system crossing a campus, a solar power facility or a cell tower would not be subject to the Plan.*
8. Should the Plan apply to leases or licensees on UC properties for special events, e.g., summer camps, Xmas tree lots, book fairs, event parking, etc.? *No, even if the use is deemed to be one UC would otherwise engage in, the Plan applies to arrangements for continuous occupancy for a term of more than one year. Many licenses are for non-exclusive episodic use of space or land and would not be covered by the Plan even if they were for a term longer than one year. Short term leases of less than one year duration, even if for exclusive continuous use are not covered by the Plan.*
9. Is it anticipated that UC's landlords or tenants would be subject to future increases to the fair wage rate (above the Plans' upper end \$15 rate achieved October 1, 2017)? *No, any project adopted pursuant to these Guidelines would be subject to a minimum wage requirement increasing to \$15 per hour by October 1, 2017 and fixed at that minimum rate through the expiration of the agreement even if the Plan is modified subsequent to the effective date of the agreement.*
10. What about part time work; does the Plan apply regardless of hours worked per week? *The Plan will apply to those employees of lessees and licensees working more than 20 hours per week. This is analogous to UC's application of the Plan to its own employees consistent with the notion that many of the Lease and License transactions covered by the Plan are businesses in which UC might otherwise engage.*

Business Affiliation Questions:

1. Are Leases and Licenses by UC affiliates and joint ventures, whether controlled by UC or not, whether carrying the UC name or not, subject to the Plan (e.g., Children's Hospital Oakland - dba UCSF Benioff Children's Hospital Oakland, BayHealth LLC). *NO, these entities are not UC.*
2. Will UC's existing and future affiliations or joint ventures require application of the Plan going forward? *NO, the policy applies only to UC and its subcontractors, but not to third parties.*