

WAGE REQUIREMENTS LAW



The Wage Requirements Law (County Code Section 11B-33A) aims to ensure that employees of vendors awarded certain County service contracts receive livable wages¹. The Wage Requirement Law (WRL) is commonly known as the Living Wage law and is an effort to address concerns about the ability of employees of vendors awarded contracts by Montgomery County to attain a wage commensurate with the cost of living in Montgomery County. The law exempts a limited class of vendors from WRL coverage, including vendors with contracts under \$50,000, tax exempt organizations and bridge contracts.

In FY16, the Council passed and the Executive signed four bills related to the Wage Requirements Law (WRL). These bills amended the WRL in several areas, including reporting requirements and deduction allowances. The Office of Procurement implemented these amendments by updating reporting forms, adjusting office procedures and enhancing the internal tracking systems. The following chart lists the four measures passed by the County Council, signed by the County Executive and implemented by the Office of Procurement:

14-14	Employee Health Care Reporting	Passed 7/22/2015, enacted
29-14	Gender and Race Reporting	Passed 7/22/2015, enacted
5-15	Health Insurance Preference	Passed 7/1/2016, enacted
43-15	Living Wage enhancement	Passed 5/10/2016, enacted

FY16 Retroactive Pay from County Contractors

As a part of WRL enforcement, the Office of Procurement conducts audits. Where the audits reveal an underpayment of the vendor's employees who work on contracts awarded by the County, the Office of Procurement requires the vendor to issue payment to the affected employees. In FY16, retroactive pay actions were undertaken as the result of four audits and one court case. These actions resulted in retroactive pay of \$300,070.78 that was shared among 318 workers on County contracts. The table below indicates the contractor, the amount recouped and the number of workers affected.

Contractor	Retroactive Pay	Number of Affected Workers
Camco, Inc.	\$110,000.00	8
Potomac Disposal, Inc.	\$5,342.45	47
Unity, Inc.	\$113,260.48	109
Securitas, Inc.	\$53,836.95	94
LT Services, Inc.	\$17,630.90	60
TOTALS	\$300,070.78	318

Another administrative requirement of the Wage Requirements Law is for contractors to submit quarterly payroll reports. Under the current WRL, these reports must contain data on a contractor's health insurance and other fringe benefits, as well as the race and gender of the contractor's employees

¹ The Wage Requirement Law is applicable to contracts executed on or after July 1, 2003.

who perform measurable work on the County contract. In FY16 the County increased the compliance of this requirement from 40% to 77%. This was the direct result of adjusting office procedures and enhancing the internal tracking systems.

Minority, Female & Disabled (MFD) Contracts Subject to the Wage Requirements Law

The WRL requires an annual report on the number of contracts and subcontracts with minority-owned businesses that are subject to the requirements of the Law along with data on year-to-year variance. In accordance with Section 11B-33A (i) of the Wage Requirements Law, the tables below contain the number of MFD contracts and subcontracts subject to the Wage Requirements Law for FY11 through FY16.

	FY11 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	673	47	7%	41	6%
Contracts with a vendor-claimed exception	483	11	2%	7	1%
Contracts operating under the Wage Requirements Law	190	36	19%	34	18%

	FY12 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	615	66	11%	80	13%
Contracts with a vendor-claimed exception	361	18	5%	6	2%
Contracts operating under the Wage Requirements Law	254	48	19%	74	29%

	FY13 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	641	75	12%	117	18%
Contracts with a vendor-claimed exception	384	22	6%	9	2%
Contracts operating under the Wage Requirements Law	257	53	21%	108	42%

	FY14 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	413	67	16%	32	8%
Contracts with a vendor-claimed exception	244	18	7%	3	1%
Contracts operating under the Wage Requirements Law	169	49	29%	29	17%

	FY15 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	659	97	15%	49	7%
Contracts with a vendor-claimed exception	385	27	8%	3	1%
Contracts operating under the Wage Requirements Law	274	70	26%	46	17%

	FY16 Contracts				
	All	MFD			
		Prime		Sub	
Contracts subject to Wage Requirements Law	831	149	18%	61	7%
Contracts with a vendor-claimed exception	469	46	10%	3	1%
Contracts operating under the Wage Requirements Law	362	103	28%	58	16%

For the years reported, FY06 through FY12, MFD participation was relatively consistent. For those contracts ultimately subject to the Wage Requirements Law, those with no vendor-claimed exemption, the average MFD subcontractor participation was 22%, while the median was 21%. For MFD prime contractors, both the average and the median MFD participation was 16%. For prime contractors, the range was from 13% to 19%. The sub-contractor participation ranged from 18% to 22%.

Vendor-Claimed Exceptions to the Wage Requirements Law

The Wage Requirements Law allows for exceptions based on the characteristics of the vendor's business. The County began compiling this information in FY 06

	FY11	FY12	FY13	FY14	FY15	FY16
Contracts subject to Wage Requirements Law ⁱ	673	615	641	413	659	831
Contracts with a vendor-claimed exception	483 (72%)	361 (59%)	384 (60%)	244 (59%)	385 (58%)	469 (56%)
Contracts operating under the Wage Requirements Law	190 (28%)	254 (41%)	257 (40%)	169 (41%)	274 (42%)	362 (44%)

Reason 1	72	47	37	0	0	0
Reason 2	234	161	179	169	265	328
Reason 3	6	8	6	3	7	8
Reason 4	72	99	140	68	107	129
Reason 5	0	0	0	0	0	0
Reason 1,2	87	44	14	0	0	0
Reason 1,4	6	1	3	0	0	0
Reason 2,4	4	1	5	3	4	1
Reason 1,2,4	1	0	0	0	0	0
CAO Waiver	1	0	0	1	2	3
Total	483	361	384	244	385	469

As the above table demonstrates, since FY11, the percentage of waivers granted have been consistently declining even though the number of contracts have been increasing each year.

ⁱ Section 11B-33A (b) of the County Code permits vendors to claim exceptions to the Wage Requirements Law. They are listed on the Wage Requirements Certification form as follows:

Reason 1 - Vendor employs fewer than 10 employees. (Repealed effective April 1, 2010.)

Reason 2 - Vendor has received less than \$50,000 in the last 12 months and will receive less than \$50,000 in the succeeding 12 months.

Reason 3 - Vendor is a public entity.

Reason 4 - Vendor is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code.

Reason 5 - Vendor is expressly precluded from complying with the Wage Requirements Law by the terms of any federal or state law, contract or grant.