

LARGE RETAIL LIVING WAGE AND BENEFITS ORDINANCE

IN THE LAWRENCE TOWNSHIP COUNCIL

AN ORDINANCE ESTABLISHING MINIMUM EMPLOYMENT STANDARDS FOR THE LARGE RETAIL INDUSTRY TO ENCOURAGE LARGE RETAIL EMPLOYERS TO PAY LIVING WAGES AND CREDIT THOSE THAT PROVIDE EMPLOYEE BENEFITS.

BE IT ORDAINED, BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF LAWRENCE, COUNTY OF MERCER, STATE OF NEW JERSEY:

Section 1. Findings and Declaration of Policy.

(a) The Lawrence Township Council declares that it is the policy of the Township to promote wages and benefits that allow working families in our community to meet basic needs.

(b) Many large retailers pay very low wages and do not provide their workers with adequate benefits, and many employees of large retailers, even full-time employees, qualify for a variety of public benefits such as Medicaid and food stamps.

(c) Responsible retailers that pay living wages and provide employee benefits, such as health care, face growing pressure to cut back when their competitors are permitted to pay poverty-level wages and no benefits.

(d) The adverse impact of large retailers that engage in such negative business policies and strategies is particularly harmful to workers, their families and the community because of the large scale of the operations of large retailers and their ability to pressure smaller businesses into following such practices to compete.

(e) Taxpayers are likely to see increased public costs when companies that provide health benefits either drop those benefits or are replaced by companies that do not, because more working families will be forced to obtain necessary care from public health clinics, public hospitals, emergency rooms, and publicly funded programs such as Medicaid.

(f) An increase in the percentage of low-wage jobs without benefits threatens the health and welfare of all Township residents because low-income working families without benefits have poor access to the health care system, lack preventive health care services, and are one step away from crushing financial debt should they fall sick.

(g) Large retailers are among our nation's largest companies and can afford to provide better wages and pay a fair share of their employees' health care costs while still operating profitably.

(h) In order to safeguard the economic well-being of the public, and to reduce the burden on the taxpayers and protect the public safety net, this Ordinance ensures that large retailers pay their workers a living wage and encourages them to provide important benefits.

Section 2. Definitions. For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) "Township" means Lawrence Township.

(b) "Company" means any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity, and shall include all of the members of a "controlled group of corporations," as defined in Section 1563(a) of the United States Internal Revenue Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the United States Internal Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the United States Internal Revenue Code.

(c) "Large retailer" means any company that operates a retail store located within the geographic boundaries of the Township where:

(1) the company's gross revenues total \$1 billion or more on an annual basis;

(2) the indoor premises of the retail store comprise 100,000 square feet or more. For the purposes of this definition, the indoor premises of adjacent stores shall be aggregated if the stores share management, a controlling ownership interest, a warehouse, or a distribution facility.

(d) "Premises of a large retailer" means all retail store buildings occupied by a large retailer and associated indoor or outdoor areas including, but not limited to, parking lots, sidewalks, pedestrian areas, and employee break areas.

(e) "Subcontractor" means any company that performs services, including but not limited to janitorial or security services, on the premises of a large retailer or that holds a

sublease or contract authorizing that party to occupy, use, control or do business on the premises of a large retailer.

(f) “Large retail employer” means any large retailer or subcontractor.

(g) “Employee” means any person who in a particular week performs at least 5 hours of work on the premises of a large retailer for any large retail employer. This definition includes persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

(h) “Agency” means the department designated by the Township to administer this Ordinance.

(i) “Benefits” means payments made by a large retail employer for any bona fide fringe benefits, paid directly to an employee or to a third party on behalf of an employee or dependents of an employee, such as benefits related to health care, retirement security, or training and education, but excluding any payments that are tips or gratuities, deducted from an employee’s wages or otherwise reimbursed by an employee, or required by any other local, state, or federal law. Also excluded from this definition is the value of any benefit for which an employee is eligible but for which no payment is actually made by a large retailer to the employee or to any other party on the employee’s behalf because the employee either does not actually utilize or does not elect to receive the benefit for any reason.

Section 3. Living Wage and Benefits Rates.

(a) Hourly Compensation Package. All large retail employers shall provide employees an hourly compensation package with a total value of no less than the sum of the living wage rate and the benefits rate for each hour that the employee works on the premises of a large retailer. The wage component of any hourly compensation package shall be no less than the living wage rate. The balance of the hourly compensation package may be provided in wages, benefits, or any combination of the two, so long as the total hourly value of the wages and any benefits provided an employee are no less than the total required hourly compensation package for each hour worked. A large retail employer may use any reasonable methodology, consistent with any regulations issued by the Agency, for determining the value of any benefits paid for and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits paid for by the employer on behalf of the employee and/or his or her dependents.

(b) Beginning on the effective date of this Ordinance, the living wage rate shall be an hourly rate of \$11.08 — a wage which will enable a full-time worker to earn an income that will lift a family up to approximately 115% of the Federal Poverty

Guidelines for a family of four. The living wage rate shall be increased on January 1, 2007 and on January 1 of successive year by the increase in the cost of living.

(c) Benefits Rate. Beginning on the effective date of this Ordinance, the benefits rate shall be \$3.50 per hour. The benefits rate shall be increased on January 1, 2007 and on January 1 of successive years by the increase in the cost of living.

(d) The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index for All Items, Urban Wage Earners and Clerical Workers, or its successor index as published by the U.S. Department of Labor or its successor agency. The amount of the increase in both the living wage rate and the benefits rate shall be rounded to the nearest multiple of five cents. The Agency shall announce by November 1 of each year the adjusted living wage rate and benefits rate, which shall take effect the following January 1.

Section 4. Notice, posting and payroll records.

(a) By December 1 of each year, the Agency shall publish and make available to large retail employers a notice, in English and Spanish, informing employees of the current living wage rate and benefits rate and of their rights under this Ordinance, which large retail employers shall post in a conspicuous place at any workplace where an employee works.

(b) Large retail employers shall allow the Agency access to payroll and benefits records to monitor compliance with the requirements of this Ordinance, and shall permit an employee or an employee's designated representative to inspect the large retail employer's payroll and benefits pertaining to that employee. Where a large retail employer does not maintain or retain adequate records documenting wages or benefits paid, or does not allow the Agency reasonable access to such records, there shall be a rebuttable presumption that the large retail employer has not paid the requisite hourly compensation package. This presumption may be overcome if the large retail employer proves by clear and convincing evidence that the large retail employer has paid the requisite hourly compensation package.

Section 5. Implementation and Enforcement.

(a) The Agency may interpret, implement and enforce this Ordinance, including issuing regulations and administrative findings of violations and instituting legal actions to enforce administrative findings. Any regulations promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this Ordinance.

(b) No large retail employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this Ordinance, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in any of the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

(c) Any employee harmed by a large retailer's violation of this Ordinance may bring an action against the large retailer in any court of competent jurisdiction and, upon prevailing, shall be awarded any appropriate legal or equitable relief, including any compensation required under this ordinance that was not timely paid and an additional and equal amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs of suit. Any investigation of an employer by the Agency or other law enforcement officer shall not bar an employee from bringing an action.

(d) A large retailer that violates this Ordinance may also be required to pay a civil penalty of an amount set by the Agency or a court sufficient to deter future violations, but not less than \$100 per violation. Each employee and each week that a large retail employer fails to pay the total hourly compensation required by this ordinance or retaliates against an employee or other person in violation of this Ordinance shall constitute a separate violation. Civil penalties shall be retained by the Agency and used to finance activities to enforce this Ordinance.

(e) The Agency shall make information regarding all large retail employers' compliance with this Ordinance publicly available. This information shall be updated every six months for the first two years of a large retail employer's operation in the Township, and every year thereafter.

Section 6. Miscellaneous.

(a) This Ordinance shall be liberally construed in favor of its purposes. All ordinances, regulations, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict; however, this Ordinance shall not be construed to preempt or otherwise limit the applicability of any such law that provides for payment of higher or supplemental wages or benefits.

(b) The provisions of this Ordinance may not be waived, except in the case of employees covered by bona fide collective bargaining agreement, the living wage and benefits rate shall be the rates provided for by the collective bargaining agreement.

(c) If any part of this Ordinance, or the application of the Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part to other persons or circumstances, shall not be affected by such a

holding and shall continue in full force and effect. To this end, the parts of this law are severable.

(d) This Ordinance shall take effect 120 days after enactment.

