

TYPE:	Administrative
TITLE:	Fair Wage for Construction Contracts
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APPROVED BY:	Durham College Leadership Team
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1. Introduction

The Offices of the Chief Administrative Officer and Vice-President Administration & Chief Financial Officer, through the Associate Vice-president, Facilities and Ancillary Services, will provide support, information, training when required regarding the Fair Wage for Construction Contracts Policy & Procedure.

2. Purpose

This policy and procedure has been developed to provide guidelines for paying fair wages to all contractors and subcontractors during construction contracts.

3. Definitions

Refer to [Durham College's Standard Definitions](#).

4. Policy statements

4.1. On all construction contracts with Durham College with a minimum pre-tax value of C\$1,000,000.00, every contractor and subcontractor shall pay or provide wages, benefits and hours of work to their employees, in accordance with this policy and procedure and the Fair Wage Schedule. This policy does not include residential construction contracts with the College.

5. Procedure

5.1. Fair Wage Schedule

5.1.1. The Institution shall make available, through its tender call to every person bidding on the Institution's construction contracts, the current Fair Wage Schedule and shall include in contract documents and/or provide copies of them to the bidders, or make them available through the institution's website. The contractor and its subcontractors shall not be responsible for any Fair Wage Schedule rate increases that occur after the closing of the tender for the construction contract on which the contractor is the successful bidder. A contractor must provide all of its

subcontractors with a copy of the Fair Wage Schedule before any construction work is performed.

- 5.1.2. Contractors and subcontractors cannot subcontract any portion of the contract for less than the Fair Wage Rate.

5.2. Contractor Compliance

- 5.2.1. For all construction contracts with the institution, the contractor shall provide to the institution, in a form acceptable to the institution, a notification that the contractor and its subcontractors are in compliance with the Fair Wage Schedule. This notification shall be provided to the institution after substantial performance of the construction contract as defined in the *Ontario Construction Act*, R.S.O. 1990, c. C.30, as amended, including successor legislation.

5.3. Subcontractor Compliance

- 5.3.1. A contractor is fully responsible for ensuring that all of its subcontractors comply with the Fair Wage Schedule. A subcontractor is fully responsible for ensuring that all of its subcontractors comply with the Fair Wage Schedule.

5.4. Legislative compliance

- 5.4.1. Contractors and subcontractors shall obey all federal, provincial and municipal laws, acts, ordinances, regulations and bylaws, which could in any way pertain to the work outlined in the contract or to the employees of the company.
- 5.4.2. Contractors and subcontractors shall ensure Workplace Safety and Insurance Board (WSIB) compliance and coverage in accordance with relevant legislation and the Institution's prevailing policy.
- 5.4.3. Without limiting the generality of the foregoing, contractors and subcontractors shall satisfy all statutory requirements imposed by the *Occupational Health and Safety Act* and regulations made thereupon, on a contractor, a constructor and/or employer with respect to or arising out of the performance of the contractor's and subcontractor's obligations.

5.5. Posting

- 5.5.1. All contractors must post, in a conspicuous place on every construction project site, in a location satisfactory to the institution, a copy of this policy and procedure and the Fair Wage Schedule. They will be supplied to them by the institution and will include a telephone number by which any inquiry regarding this policy and procedure and/or the Fair Wage Schedule may be made to the institution.

5.6. Records

5.6.1. The contractor must keep records of the names, addresses, wages paid, benefits paid or provided, and hours worked for all of its employees. The contractor shall make these records available for inspection by the institution upon request by the institution for a period of four (4) years after substantial completion of the construction contract. The institution will only be permitted access to these records upon receipt of a registered complaint.

5.6.2. The contractor shall, in any agreement with a subcontractor, require the subcontractor to comply with all subparagraphs below:

- The subcontractor shall keep records of the names, addresses, wages paid, benefits paid or provided, and hours worked for all of its employees.
- The subcontractor shall make these records available for inspection by the institution within five (5) days of the date of the institution's request. The institution will only be permitted access to these records upon receipt of a registered complaint, and only for a period of four (4) years after final completion of the construction contract.
- The subcontractor shall also require its subcontractors to assume the same obligations in relation to their own employees.

5.6.3. Failure to provide these records as required by this procedure may result in the contractor or subcontractor being subject to Section 5.10, Consequences of Non-Compliance provisions.

5.7. Complaints

5.7.1. Any contractor, subcontractor or employee that tendered on an awarded construction contract by the institution, may submit a complaint against that tender award to the institution with respect to any contractor or subcontractor on that project. Registered complaints should be submitted at the earliest time but no later than fifteen (15) days following:

- Substantial performance of the relevant construction contract where a complaint is being made against a contractor; or
- Substantial completion of the relevant subcontract to a construction contract where a complaint is being made against a subcontractor.

- 5.7.2. Upon receipt of a registered complaint, the institution shall take such action as it deems necessary to determine whether the contractor and subcontractor involved or named in the registered complaint is in compliance with the Fair Wage Schedule.
- 5.7.3. The institution's Associate Vice-President, Facilities and Ancillary Services, or designate shall inform the complainant and any contractor or subcontractor involved or named in the complaint of the results of the institution's determination of the contractor's and/or subcontractor's compliance or non-compliance with the Fair Wage Schedule, within 15 days of rendering a decision. The decision of the institution's Associate Vice-President, Facilities and Ancillary Services is final.

5.8. Inspection on audits

- 5.8.1. The institution retains the right to inspect and audit the payroll records (as referred to in the Records section of this procedure) of the contractor or subcontractor at any time during the period of the construction contract and up to four (4) years after the construction contract has been completed.
- 5.8.2. The contractor shall supply certified copies of any records whenever requested by the institution within five (5) business days. After completion of the construction contract, the institution will only be permitted access to these records upon its receipt of a registered complaint of non-compliance of a contractor or subcontractor.

5.9. Compliance

- 5.9.1. A contractor or subcontractor shall be in compliance with the wage requirements of the Fair Wage Schedule when it pays its employees' wages, vacation and holiday pay, fringe benefits equal to or greater than the amount set out in the Fair Wage Schedule, issued as part of the tender package.

5.10. Consequences of non-compliance

- 5.10.1. The Institution, upon determining that a contractor or subcontractor is in non-compliance of the Fair Wage Schedule, shall undertake the actions set out in the following subparagraphs:
 - The institution shall advise the contractor and/or subcontractor, in writing, that it has been determined that the contractor or subcontractor is in non-compliance, providing the details of that non-compliance. The notice shall stipulate that the contractor and/or subcontractor is required to comply and/or immediately pay (retroactively) wages to its workers according to the Fair Wage Schedule applicable at the time of the construction contract award. If

a contractor or subcontractor is provided with notice in accordance with this subparagraph, this fact shall be recorded as an occurrence of non-compliance.

- The institution as a result of the determination of non-compliance of the contractor and/or subcontractor, may deduct that amount from any payment owed by the Institution to the contractor.
- The institution may withhold an amount of funds equal to the amount by which the contractor or subcontractor has benefited from its non-compliance, from any payment owed by the institution to the contractor until such time as the contractor or subcontractor complies.

5.10.2. Where a contractor or subcontractor has been determined to be in non-compliance with the Fair Wage Schedule for the first time in a five (5) year period, the institution may require that the contractor or subcontractor, on the next three (3) construction contracts on which the contractor or subcontractor performs construction work, submit an accountant's report that verifies the contractor's or subcontractor's compliance with this policy and procedure and the Fair Wage Schedule. The accountant's report shall be in a form satisfactory to the institution and shall be submitted after substantial performance of the Construction Contract as defined in the *Construction Act*, R.S.O. 1990, c. C.30, as amended, including successor legislation.

5.10.3. Where a contractor or subcontractor has been determined to be in non-compliance with the Fair Wage Schedule for a second or subsequent time within a five (5) year period from the date of the first determination of non-compliance by the institution, the institution may:

- Refuse to accept bids, quotations or proposals from that contractor on construction contracts, for a period of two (2) years, save and except any construction contract the contractor may currently have with the Institution.
- Not allow that subcontractor to perform any construction work on any construction contract, for a period of two (2) years, save and except any construction contract on which the subcontractor may currently be performing construction work.

6. Roles and responsibilities

- 6.1. The Associate Vice-President, Facilities and Ancillary Services, or designate will prepare and review the Fair Wage Schedule from time to time after consultation with the other Geographical Board Area 9 members.
- 6.2. The Offices of the Chief Administrative Officer and Chief Financial Officer are responsible for ensuring that the Fair Wage for Construction Contracts policy and procedure is fully implemented.

7. Accessibility for Ontarians with Disabilities Act considerations

Accessibility for Ontarians with Disabilities Act (AODA) standards have been considered in the development of this policy and procedure and it adheres to the principles outlined in the College's commitment to accessibility as demonstrated by the Multi-Year Accessibility Plan.

8. Non-compliance implications

Failure to comply with this policy may result in restricted ability to bid on the institution's construction business for academic purposes.

9. Related forms, legislation or external resources

- None.