## REVISED STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Nick Bowman |
| **Proposed No**.: | 2019-0422 | **Date:** | November 6, 2019 |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2019-0422.2 prohibiting the county and any contractors doing business with the county, from paying disabled employees less than the county’s minimum wage, passed out of committee on November 5, 2019, with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment 1 to clarify that the living wage provisions in King County Code 3.18 apply to individuals with disabilities and grants the executive until January 1, 2020 to include a provision requiring the contractor comply with the living wage requirements in county contracts..*** |

**SUBJECT**

An Ordinance prohibiting the county and any contractors doing business with the county, from paying disabled employees less than the county’s minimum wage.

**SUMMARY**

The proposed ordinance would prohibit the county and any contractors or subcontractors doing business with the county from paying disabled employees less than the county’s minimum wage under King County Code 3.18.

**BACKGROUND**

In May 2014, the Council adopted Motion 14131, which established as a policy of King County "that a living wage should be paid to county employees and to the employees of persons, businesses, organizations and other entities that receive procurement contracts, tax exemptions or credits, or other financial benefits from the county." In October 2014, the Council adopted Ordinance 17909 which intended to implement the living wage policy described in Motion 14131 by setting a minimum wage for county employees and for employees of contractors who are performing work under certain county contracts for services.[[1]](#footnote-1)

The County’s living wage ordinance contained several exemptions from the minimum wage requirements including for short-term temporary employees who are employed in social service programs designed to help youth gain basic work training skills,[[2]](#footnote-2) and various categories of employees exempt from Washington State’s minimum wage requirements including certain types of agricultural workers, volunteers and casual laborers, among others.[[3]](#footnote-3) The ordinance also provided an exemption for learners, apprentices, messengers and the disabled whose employers receive a certificate from the State Director of Labor and Industries affirming that wages lower than the applicable minimum wage paid to these individuals is necessary in order to prevent curtailment of employment opportunities.[[4]](#footnote-4)

In recent years, exemptions from minimum wage requirements for disabled individuals has been discussed nationally and throughout Washington State. In 2018, the City of Seattle adopted an ordinance removing the authority to pay a subminimum wage to people with disabilities.[[5]](#footnote-5) In 2019, the State Legislature passed a law prohibiting state agencies from employing individuals with disabilities at wages less than the minimum wage under the special certificates issued by the Director of the Dept. of Labor and Industries.[[6]](#footnote-6) Also in 2019, S. 260, known as the Transformation to Competitive Employment Act, was introduced in the United States Senate. The bill would prohibit the Department of Labor from issuing any new federal certificates, known as 14(c) certificates, which allow employers to pay individuals with disabilities less than the federal minimum wage and would phase out existing certificates over a six year period.[[7]](#footnote-7) The bill is currently in the U.S. Senate’s Committee on Health, Education, Labor, and Pensions.

**ANALYSIS**

Proposed Ordinance 2019-0422 would amend the County’s living wage ordinance[[8]](#footnote-8) to remove an exemption allowing individuals with disabilities meeting the criteria under RCW 49.46.060(2) to be paid less than the applicable minimum wage. In effect, the proposed ordinance would prohibit the County or any contractors subject to the County’s living wage requirements, doing business with the County from paying employees with disabilities a subminimum wage. The proposed ordinance would not remove any other exemptions currently allowed under the code.[[9]](#footnote-9)

To determine the potential impact of the proposed ordinance, Council Staff contacted a number of Executive and County Offices which are either privy to county employee and/or contractor wage information or which operate programs whose participants may be exempt from the County’s living wage requirements. These offices include the Department of Human Resources, the Finance and Business Operations Division of the Department of Executive Services, the Department of Community and Health Services, and the Superior Court. According to Executive and Superior Court staff, there are no active county employees or county program participants who meet the disability exemption criteria.

With regards to county contracts, the Finance and Business Operations Division conducted a review of active county contracts and identified several DCHS contracts with Northwest Center, a Seattle based organization that, among other programs, provides employment services to adults with disabilities and whose workforce has a number of employees who could be eligible for payment of a subminimum wage under KCC 3.18. While DCHS staff have stated that they do not believe any of their contracts support a subminimum wage, at this time, DCHS is still reviewing any potential effects the proposed ordinance may have on renewal of any contracts with Northwest Center.

It should be noted that the proposed ordinance is prospective and would therefore not affect any current businesses or organizations under contract for services with the county. FBOD staff have stated that should the proposed ordinance be adopted, the appropriate language will be instituted in all future contracts to support it.

**AMENDMENTS**

Amendment 1 would clarify that the living wage provisions in King County Code 3.18 apply to individuals with disabilities and grants the executive until January 1, 2020 to include a provision requiring the contractor comply with the living wage requirements in county contracts.

1. King County Code 3.18.010 E defines a Contract as that which obligates the county to pay a contractor $100,000 or more for services as defined in KCC 2.93.030 and does not include: a contract between a contract-awarding authority and another government or public entity; a contract that the county enters into as the administrator of grants received from a third party; a contract for public works; an architectural or engineering contract; or a collective bargaining agreement. [↑](#footnote-ref-1)
2. KCC 3.18.030 [↑](#footnote-ref-2)
3. RCW 49.46.010(3) [↑](#footnote-ref-3)
4. RCW 49.46.060 [↑](#footnote-ref-4)
5. City of Seattle. Ordinance 125559, Council Bill 119220. <http://seattle.legistar.com/View.ashx?M=F&ID=6205567&GUID=43C21030-5901-43E7-8CFE-964BC0566977> [↑](#footnote-ref-5)
6. Washington State Legislature. C 374 L 19, Engrossed House Bill 1706. <https://app.leg.wa.gov/billsummary?BillNumber=1706&Year=2019&Initiative=false> [↑](#footnote-ref-6)
7. 116th Congress (2019-2020) S. 260 – Transformation to Competitive Employment Act. <https://www.congress.gov/bill/116th-congress/senate-bill/260/text> [↑](#footnote-ref-7)
8. Ordinance 17909 [↑](#footnote-ref-8)
9. King County Code 3.18 [↑](#footnote-ref-9)