

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
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December 2, 2020

**CHIEF PROCUREMENT OFFICER COOPER
UC HEALTH CHIEF PROCUREMENT OFFICER MIURA
ASSOCIATE DIRECTOR LAVIN**

RE: Final Report Project No. P20A002a: Systemwide Fair Wage/Fair Work

Attached is a copy of the final report for: Audit Services Project No. P20A002a Systemwide Fair Wage/Fair Work. With the issuance of this final report, please destroy any previous draft versions. We very much appreciate the assistance provided to us by you and members of your staff during our review. If you should have any questions please feel free to contact me at 510-987-9646 (email: matthew.hicks@ucop.edu).

A handwritten signature in black ink, appearing to read 'Matt Hicks'.

Matt Hicks
Systemwide Deputy Audit Officer

Attachment

cc: Senior Vice President Bustamante
Executive Vice President Nava
Executive Vice President Brostrom
Executive Vice President Byington
Chief Transformation Officer Graham
Director Sullivan
Director Wolkow
Systemwide Associate Audit Director Cataldo

UNIVERSITY OF CALIFORNIA
ETHICS, COMPLIANCE AND AUDIT SERVICES
OFFICE OF THE PRESIDENT
INTERNAL AUDIT SERVICES

SYSTEMWIDE FAIR WAGE/FAIR WORK
Project No. P20A002a
July 2020

Prepared by:
Systemwide Associate Audit Director Cataldo

Reviewed by:
Systemwide Deputy Audit Officer Hicks

Executive Summary

Introduction and Background

In accordance with the annual University of California (UC) audit plan, Internal Audit conducted a systemwide audit of the UC Fair Wage/Fair Work Plan. This audit was performed at all UC campuses using a standard systemwide audit program. Each location's internal audit department issued a report covering its local observations and associated planned management corrective actions. This summary report provides an overview of the systemwide findings and communicates any issues that should be addressed from a systemwide perspective.

The Fair Wage Fair Work (FW/FW) Plan was announced by President Napolitano on July 22, 2015. The FW/FW Plan requires that UC employees working at least 20 hours per week and employees of suppliers providing services to UC under this program are to be paid a minimum of \$14 per hour effective October 1, 2016, and \$15 per hour effective October 1, 2017.

The UC FW/FW Plan was effective as of October 1, 2015 for all new agreements and any renewed or extended agreements. Under the plan, most services performed for the University at one or more UC locations became subject to the FW/FW Plan. However, the FW/FW plan does **not apply** if the agreement:

- Is only for the furnishing of goods;
- Involves services not performed at one or more UC campuses, labs or medical centers;
- Involves services that are a Public Work with a wage determination *at or above* the UC Fair Wage; and
- Involves services funded by an extramural award containing sponsor-mandated terms and conditions (federal, state or private foundation, research grants).

Procurement

Contracts subject to the FW/FW Plan must contain a provision in the UC Terms and Conditions of Purchase that references the UC FW/FW Plan requirements. Any exceptions to this policy must be approved as follows: by the Chief Procurement Officer for a non-UC Health systemwide or Office of the President contract; by the Associate Vice President, UC Health Procurement for a UC Health systemwide contract; and otherwise by the senior procurement officer of the relevant campus or medical center. These positions are collectively defined as the "Policy Exception Authority" in systemwide procurement policy (BFB-BUS-43 Purchases of Goods and Services; Supply Chain Management).

For services (other than exempted Professional Services) that exceed \$100,000 annually, suppliers are required to perform an annual independent verification, at the supplier's expense, concerning the supplier's compliance with the FW/FW provision. Suppliers must also ensure its auditor makes available to UC its FW/FW verification work papers.

Several oversight measures were implemented to facilitate compliance with this plan including a telephone hotline and online complaint registration system for workers and contractors to report

issues to wages and working conditions, and annual verifications for contractors to ensure compliance with UC's minimum wage rules and expectations for working conditions.

Real Estate

The FW/FW Plan applied to real estate agreements effective May 1, 2016; however, this was the first year that real estate was specifically included in the scope of the systemwide audit to ensure compliance with the established guidelines. The FW/FW Plan applies to 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 specific guidelines. Real estate lessee/lessor and licensee/licensor agreements subject to FW/FW requirements are required to contain specific language that include the following sections: (a) Compliance with the Plan, (b) Audit Rights, and (c) Remedies. Lessees and licensees must provide an annual verification form attesting to their compliance with the FW/FW provisions on the annual anniversary of the contract's effective date.

Real Estate Services and Strategies (RESS) at UCOP supports campus and medical center leasing, licensing and other real estate activities and provides assistance on strategic planning, business case analysis, due diligence and market, valuation, and financial feasibility analysis for real estate matters. The responsibility for monitoring of FW/FW compliance rests with the campus real estate departments.

RESS has provided guidance to campuses to ensure that FW/FW requirements are incorporated into real estate transactions. Shortly after the FW/FW Plan was implemented in 2016, RESS issued guidelines to the campuses on the applicability of the FW/FW Plan, titled the "Fair Wage Fair Work Plan Applicability to Real Estate." It is available on the RESS website and is the definitive policy interpretation of how the FW/FW Plan is to be applied to a range of different real estate transactions.

Objectives and Scope

Campus internal auditors reviewed local FW/FW processes and documentation and interviewed key procurement and real estate services personnel. The overall purpose of the audit was to assess compliance with the UC FW/FW Plan requirements for procurement contracts and real estate leases and licenses. The audit objectives were to:

- Review contracts and leases executed in the last year to ensure that applicable contracts and leases contain the required FW/FW provision
- Determine whether procurement and real estate services are reviewing and monitoring compliance with the annual verification requirements
- Determine if exceptions to the FW/FW program were properly approved
- Validate whether suppliers and lessees/licensees complied with the annual verification requirements

Audit procedures were conducted at all campus locations and medical centers and at the Office of the President. The procedures for the Office of the President included both local and systemwide agreements.

Overall Conclusion

In general, the campuses and medical centers have implemented adequate processes to ensure the FW/FW provision is included in procurement contracts, FW/FW contracts are identified and tracked, and supplier annual verifications are monitored. The campuses and medical centers have made progress on rates of compliance since the prior year's FW/FW internal audit in implementing effective processes for monitoring supplier compliance with FW/FW requirements as the overall annual verification compliance rate, including campuses and medical centers, was 87% - up from 52% in the prior year. Compliance with verification standards continues to be an issue as evidenced by late verifications and verifications not always being completed by an independent party.

Increased oversight of the campus real estate offices is necessary to ensure that the FW/FW Plan is followed. Although real estate leases and licenses were subject to the FW/FW Plan since 2016, a number of campus real estate offices stated they were unaware of the FW/FW requirements despite several trainings provided by UCOP. As a result, several campuses were unable to provide sufficient FW/FW information related to their respective leases and licenses. Additionally, many of the campuses either lacked sufficient FW/FW lease tracking information or an adequate process to monitor and collect annual verifications.

Management corrective actions have been developed at the local level to address deficiencies identified. This report provides a summary of the observations noted at the locations, as well as corrective actions identified at the systemwide level, which generally address increased training and guidance.

Opportunities for Improvement and Action Plans

1. Improvement is Needed to Ensure Campus Real Estate Offices Comply with the FW/FW Plan

We identified a low level of compliance with the FW/FW Plan across the system for real estate leases and licenses indicating that RESS should increase oversight of the campus real estate offices to ensure that leases and licenses are reviewed for FW/FW applicability and annual verifications are tracked and monitored. We found that a number of campuses did not have adequate processes in place to track and monitor the leases in accordance with the FW/FW Plan, nor did they have a process to request or monitor the required annual verifications. Additionally, several campus real estate offices also indicated they were not aware of the FW/FW Plan requirements, and only recently initiated FW/FW processes as a result of this audit.

As previously stated, the FW/FW Plan applied to real estate agreements effective May 1, 2016. Since then, RESS has implemented the following measures to ensure campuses determine

applicability with the FW/FW Plan to real estate transactions and adhere to applicable FW/FW Plan requirements:

- Lease and License Transaction Requirements

Compliance with the FW/FW plan is integrated into the lease and license transaction requirements that the campuses must adhere to under their delegations of authority (DA2629). Campuses are required to complete a checklist for all lease and license transactions except for very short term licenses. The checklist requires the campuses to determine the applicability and compliance with FW/FW requirements for the transaction prior to submitting the lease or license for approval and execution. The checklist must be signed off by a campus official with delegated authority for this purpose.

- FW/FW Language in Standard Lease Form

The standard lease template form was updated in 2016 to incorporate the FW/FW requirements. It prompts the campuses to use specific lease language containing the FW/FW Plan requirements when the FW/FW Plan is applicable to the transaction. Recently, as a result of this audit, the standard lease form has been updated to add an annual FW/FW Plan verification form as an exhibit to the lease form to assist with ongoing compliance and tracking

- Trainings and Orientations

All UC policies pertaining to real estate, including the FW/FW Plan, are covered in RESS's real estate orientation trainings. Orientation trainings were conducted in 2017 and 2019, which were attended by all campuses. RESS also offers individual trainings to new staff that join a real estate office in the interim periods, although these trainings are not frequently utilized. An orientation/training was scheduled for April 2020, but was converted to a webinar due to the pandemic.

Most recently in February 2020, RESS distributed to the campus real estate offices standards for ongoing compliance and reporting related to the FW/FW Plan, including the lease/license verification form. Despite this guidance and the above described training efforts by RESS, the majority of the campus real estate offices were not in compliance with the FW/FW Plan requirements.

The campuses reported that of the 49 leases that were subject to FW/FW in 2019, 37 annual verifications were received (76%). However this rate is only attributable to four campuses that have received verifications. Furthermore, two campuses were unable to provide any information and several other campuses noted that the information collected may not be accurate due to instances in which leases subject to FW/FW were not included in the campus tracking. Additionally, one campuses noted that the anniversary date of the leases was missing. The lack of this anniversary date makes it difficult to determine when annual verifications are due.

These results indicate that campus real estate office personnel, and in particular new staff, need to attend trainings to understand and implement the processes and requirements that are in place to ensure FW/FW Plan compliance.

RESS has recently modified its annual reporting document on leasing activity to include fields for the campuses to identify the leases and licenses that are subject to the FW/FW Plan and whether the annual verification is current. Going forward, this campus-supplied information is an opportunity for RESS to validate and confirm campus information to ensure the FW/FW Plan requirements are met at each campus.

Action Plan:

- a. RESS will provide guidance and oversight to campus real estate offices and will follow-up with each campus to ensure that they understand the FW/FW Plan requirements and have adequate processes in place to 1) evaluate and document FW/FW applicability for all leases and licenses and 2) track, request and maintain annual verifications.

Target date: March 31, 2021

- b. RESS will provide additional training to all campus real estate personnel to re-emphasize the FW/FW Plan requirements as it pertains to real estate leases and licenses, and will make all training materials available on the RESS FW/FW resource website.

Target date: March 31, 2021

2. Annual Supplier Verification Compliance Monitoring for Campus and Medical Center Procurement has Improved

For services that exceed \$100,000 annually, suppliers are required to perform an annual independent verification, at the supplier's expense, concerning the supplier's compliance with the FW/FW provision. The FW/FW verification standards published by UC require that the verification be performed by a registered accounting firm or the suppliers' internal audit department if it reports to an independent board. If the annual verifications are performed by a registered accounting firm, the firm must not have any affiliation with the supplier. Such suppliers must also provide a UC FW/FW verification form annually, no later than 90 days after each one-year anniversary of an agreement's effective date, for the 12 months immediately preceding the anniversary date. Suppliers must also ensure their auditors make available the FW/FW work papers.

It is the responsibility of the procurement department at each UC location to follow up with the applicable vendors to ensure that they fully understand the verification requirements and solicit the required verification forms at each contract anniversary date. In an effort to facilitate FW/FW compliance, Systemwide Procurement developed and made available to all locations

a standard follow up request letter template inform suppliers of their annual verification requirement.

Improved Supplier Compliance

We noted that campus and medical center procurements have made notable improvement in complying with the FW/FW Plan requirements. We found that all locations have a process in place to monitor the annual supplier verification requirement, and the overall compliance rate for receipt of the annual verification has increased by 35%.

Specifically, the overall annual verification compliance response rate for the campuses and medical centers for the current audit period was 87%, as compared to 52% in the prior year. Specifically, the campuses received 190 supplier verification forms of the 219 that were due with a resulting annual verification rate of 87%, up from 69% in the previous year. The medical centers received 48 of the 56 required verification forms with a resulting annual verification rate of 86%, as compared to 32% in the previous year. Refer to Appendix 1 for more detailed systemwide and campus FW/FW compliance statistics collected from the campus internal audit departments in their performance of this audit.

Verification Standards not Always Met

Several locations identified instances in which the submitted verification forms did not meet the requirements set forth in the verification standards and procedures. Of the 238 verification forms that were received, 46 (19%) were not fully compliant with the requirements. In these cases, the locations identified instances in which the annual verification form was completed by the supplier's management personnel rather than an independent auditor, the verification form was submitted late, or the supplier submitted an audit report rather than completing the UC standard verification form. Local campus corrective actions have included continued communication efforts with suppliers to remind them of the verification requirements.

Noted Violations of the FW/FW Provision

A review of the 238 annual verification forms received systemwide in 2019 identified 17 instances in which the supplier did not pay the FW/FW Wage to an employee or contractor. In these situations, the applicable supplier has either confirmed that retroactive payroll adjustments were made to the employee, or the campus was still in communication with the supplier to ensure that payroll adjustments occurred. In all cases, Internal Audit will follow up with procurement to ensure that the appropriate retroactive payroll adjustments were made.

Action Plan:

In an effort to reinforce the ongoing importance of the FW/FW policy, Systemwide Procurement will issue an annual reminder to the campuses, including the compliance statistics by location, about the FW/FW compliance requirements and encourage continued communication efforts with suppliers.

Target date: March 31, 2021

Appendix 1: Systemwide Fair Wage/Fair Work Statistics

Current Year and Prior Year Compliance Statistics

FW/FW Statistics	Current Year	Prior Year
Procurement		
% Verification Forms Received		
Campuses	87%	69%
Medical Centers	86%	32%
Total	87%	52%
% Forms Received Not Meeting All Requirements		
Campuses	20%	18%
Medical Centers	17%	8%
Total	19%	15%
# Exemptions Granted		
Campuses	2	2
Medical Centers	7	1
Total	9	3
# Professional Services Exceptions		
Campuses	47	N/A
Medical Centers	61	N/A
Total	108	N/A
# Instances of Suppliers Identified Not Paying Fair Wage		
Campuses	15	13
Medical Centers	2	2
Total	17	15
Real Estate		
% Verification Forms Received	76%	N/A

Current Year Procurement Statistics by Location

Campuses

	Total	UCB	UCD	UCI	UCLA	UCM	UCR	UCSB	UCSC	UCSD	UCSF	UCOP	SW
# Contracts Subject to Verification Requirement	219	11	16	13	76	8	9	5	3	25	27	0	26
# Verification Forms Received	190	11	14	13	75	8	7	4	3	14	26	0	15
% Verification Forms Received	87%	100%	88%	100%	99%	100%	78%	80%	100%	56%	96%	N/A	58%
# Not Meeting All Requirements	38	5	0	0	4	3	2	3	1	14	0	N/A	6
% Not Meeting All Requirements	20%	45%	0%	0%	5%	38%	29%	75%	33%	100%	0%	N/A	40%

Medical Centers

	Total		UCD	UCI	UCLA					UCSD	UCSF		SW
# Contracts Subject to Verification Requirement	56		8	7	11					14	15		1
# Verification Forms Received	48		5	7	10					10	15		1
% Verification Forms Received	86%		63%	100%	91%					71%	100%		100%
# Not Meeting All Requirements	8		0	0	7					1	0		0
% Not Meeting All Requirements	17%		0%	0%	70%					10%	0%		0

Total Campus and Medical Centers

	Total	UCB	UCD	UCI	UCLA	UCM	UCR	UCSB	UCSC	UCSD	UCSF	UCOP	SW
# Contracts Subject to Verification Requirement	275	11	24	20	87	8	9	5	3	39	42	0	27
# Verification Forms Received	238	11	19	20	85	8	7	4	3	24	41	0	16
% Verification Forms Received	87%	100%	79%	100%	98%	100%	78%	80%	100%	62%	98%	N/A	59%
# Not Meeting All Requirements	46	5	0	0	11	3	2	3	1	15	0	N/A	6
% Not Meeting All Requirements	19%	45%	0%	0%	13%	38%	29%	75%	33%	63%	0%	N/A	38%

Campus Real Estate Statistics by Location

	Total	UCB	UCD	UCI	UCLA	UCM	UCR	UCSB	UCSC	UCSD	UCSF	UCOP
# Space leases subject to FW/FW	49	10	-	2	3	1	-	2	4	23	4	0
# Space leases with verification	37	9	-	0	0	0	-	2	3	23	0	0
% Verifications received	76%	90%	-	0%	0%	0%	-	100%	75%	100%	0%	N/A