

Guide to paying a living wage in contracts

From 1 December 2021, all public service departments (including departmental agencies) going to market to negotiate a new contract or renew an existing contract for cleaning, catering and security guard services must include requirements that workers undertaking those services are paid, at a minimum, the New Zealand Living Wage (being \$22.75 per hour as at September 2021), with annual increases.

This guidance provides agencies with practical information to help them meet these requirements.

Designated contracts

The Government has prioritised workers who provide services in these designated contract areas:

- cleaning services
- catering services
- security guard services

Workers in these areas tend to be on lower wages and are more vulnerable to poor labour practices.

Other contracts

The requirement to ensure workers are paid, at minimum, a living wage applies to people that are employed or contracted by providers to deliver cleaning, catering and security guard services to public service departments and departmental agencies.

Paying a living wage is encouraged for other service contracts as well and information in this guidance will help agencies to do this. At a minimum, you should ensure that contracts set out the expectation that suppliers and sub-contractors comply with all employment standards. Doing this can help:

- ensure that workers employed to fulfil government contracts are treated fairly and not exploited, and
- reduce the risk of your agency becoming associated with employment standard breaches and labour exploitation.

This helps to protect all workers delivering these services to your agency in New Zealand.

For more information, see [Improving conditions for New Zealand workers](#)

Annual increases to the living wage

In order to provide agencies and providers with as much certainty as possible in their budgetary planning, the Ministry of Business, Innovation and Employment (MBIE) maintains a five year projection on their website of increases to the living wage to be used in government contracts under this policy. It seeks to approximate and anticipate changes to the New Zealand Living Wage rate over time using Labour Cost Index (LCI) projections¹.

For the current living wage in contracts rate, see [Improving conditions for New Zealand workers](#)

¹ The government set rate is derived from the Labour Cost Index (LCI) Private sector and occupational skill level 5, as defined by the Australian and New Zealand Standard Classification of Occupations (ANZSCO), and as published by Stats NZ (<http://infoshare.stats.govt.nz/>)

MBIE will review the five year rate increases annually for alignment with the New Zealand Living Wage. MBIE reserves the right to make adjustments as appropriate, including if the rate is materially out of step with the New Zealand Living Wage. Any amended table will be re-published on 1 September each year on MBIE's website.

Any adjustments in the rates would only apply to new contracts or renewed contracts that are entered into after that date. Agencies with existing contracts do not need to require providers to amend their existing terms to align with the changed rates, until those contracts are renewed.

For relevant long-term contracts featuring automatic, 'roll-over' extension arrangements ('evergreen' contracts), agencies are expected to implement living wage requirements by variation to contract within the first two financial years of the policy coming into effect.

Examples contract clauses and RFx questions

Contract clauses

The following contract clauses aim to assist agencies to implement key aspects of this policy and their consistent application in government contracts. They set out:

- Application of the living wage to those workers directly undertaking cleaning, catering or security guards services in relation to the contract and how to build in the annual increases based on the rate published by MBIE.
- A simple mechanism for agencies to obtain assurances, on an annual basis, from a provider that the living wage is being paid, including requiring reasonable supporting evidence.
- A right to an audit to ensure compliance.
- A provision to ensure that the requirement to pay a living wage to workers flows down through all sub-contracting arrangements.

Minimum Living Wage Rate

X.1 Definitions: For the purposes of this clause X:

"Minimum Living Wage Rate" means, during the applicable period, such hourly rate as set out on MBIE's Government Procurement website (<https://www.procurement.govt.nz/broader-outcomes/improving-conditions-for-new-zealand-workers/>), as updated annually.

"Specified Role" means any functional role as a cleaner, caterer and/or security guard.

"Specified Person" has the meaning given to that term in clause X.2.

X.2 Minimum living wage rate: The Supplier shall ensure that each person performing any Specified Role in connection with the Supplier's performance of this [agreement] ("Specified Person") is paid, for each hour worked, at a rate no less than the Minimum Living Wage Rate applicable at the time. Non-compliance with this provision shall be deemed to be a material breach of this [agreement].

X.3 Annual confirmation: The Supplier shall, on a 12 monthly basis, provide written confirmation to the [Agency] that the Supplier has complied with its obligations in clause X.2. If required by the [Agency], the Supplier shall, within 7 days of receiving a request from the [Agency], provide to the [Agency] reasonable evidence of such compliance to support the confirmation.

X.4 Audit:

The [Agency] may at any time, with no less than [2 Business Days'] prior written notice, notify the Supplier that the [Agency] wishes to audit the Supplier's compliance with clause X.2. The Supplier shall assist the [Agency] in a timely manner with any such audit, including by making its premises, personnel, systems, information, data, accounts, documents and records available to the [Agency] or its nominee(s) if requested.

If the [Agency] is undertaking an audit under this [agreement] for any other purpose, the Supplier shall also offer to the [Agency] access to the information, data, accounts, documents and records required to audit the Supplier's compliance with clause X.2.

X.5 Subcontractors: The Supplier shall ensure that each of its subcontractors, and the subcontractors' own subcontractors, comply with the obligations included under clause X.2, in respect of each Specified Person they employ or contract with, as if those subcontractors were the Supplier. Non-compliance with this provision shall be deemed to be a material breach of this [agreement].

Commentary on example contract clauses

Clause X.1 sets out the relevant definitions used in this clause. Alternatively, these definitions can be moved to the main definition clause in the agreement.

Clause X.2 sets out the central obligation of the Supplier to ensure all relevant personnel undertaking cleaning, catering and security guard roles are paid at least the “minimum living wage rate”, and that this rate shall reflect the rates published by the Ministry of Business, Innovation and Employment (adjusted from time to time). This is a minimum, not a maximum, rate. Breach of this clause is expressly identified as being a material breach of the agreement, so that the Agency has the option to terminate the agreement for non-compliance by the Supplier, even if the agreement only permits termination for material (as opposed to any) breach of that agreement.

Clause X.3 provides a simple mechanism for the Agency to obtain some assurance from the Supplier that it has met its obligation to pay the “minimum living wage rate”. The agency can require reasonable supporting evidence.

Clause X.4 provides the Agency with the ability to obtain further assurance by way of undertaking an audit of the Supplier's compliance with its “minimum living wage rate” obligations, including by requiring the Supplier to offer the Agency access to relevant information and records on its “minimum living wage rate” obligations. The Agency could also obtain this assurance where the Agency is simply undertaking a more general audit of the Supplier as required by another audit obligation in the agreement.

Clause X.5 obliges the Supplier to require its contractors and sub-contractors to also pay the minimum living wage rate to the cleaners, caterers and security guards they employ. This is intended to prevent the Supplier from circumventing the obligation through employing the cleaners, caterers and security guards as contractors or sub-contractors. As for clause X.2, breach of this clause is expressly identified as being a material breach of the agreement, so that the Agency has the option to terminate the agreement for non-compliance by the Supplier, even if the agreement only permits termination for material breach of that agreement.

RFx questions

Agencies should consider making it a mandatory requirement of the RFx criteria that the provider will agree to pay a living wage to workers within the scope of this policy.

Mandatory requirements	Yes	No
Does your company agree to ensure that workers performing [catering, cleaning or security guards services] to [Agency] will be paid at a rate no less than the 'Minimum Living Wage Rate' as published on MBIE's website?		

Agencies can refer to the following questions as examples of assessing a provider's ability to meet requirements.

Questions	Yes	No
Does your company comply with applicable New Zealand employment law and standards?		
Does your company keep up to date and accurate wage, time, leave and holiday records?		
Do all of your employees have a written employment agreement?		
Will you be using any sub-contractors, independent contractors and/ or franchisees? If yes: <ul style="list-style-type: none"> Please explain why you are not supplying the services directly. Demonstrate how your company will ensure workers performing [catering, cleaning or security guards services] to [Agency] will be paid at a rate no less than the 'Minimum Living Wage Rate' as published on MBIE's website? 		