



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Legislative Analysis**

**Government Operations Committee**

January 12, 2010  
9:30 AM  
Commission Chamber

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**Miami-Dade County Board of County Commissioners  
Office of the Commission Auditor**

**Government Operations Committee  
Meeting Agenda**

**January 12, 2010**

**Item**

1(E)1
3(A)

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Esq., Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analyses prepared by:  
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**Agenda Item:** 1(E)1  
**File Number:** 093228  
**Committee(s) of Reference:** Government Operations Committee  
**Date of Analysis:** January 12, 2010  
**Type of Item:** Ordinance  
**Prime Sponsor:** Commissioner Natacha Seijas

### Summary

This item establishes Chapter 22 of the Code of Miami-Dade County; prohibiting wage theft, providing administrative procedures and private cause of action for wage theft. The proposed legislation is intended to be a tool to root out violations of U.S. labor laws occurring in Miami-Dade County. This legislation also provides remedies for employees who are exploited by unscrupulous employers.

### The ordinance provides for the following:

- Procedures for wage theft complaints
- Filing wage theft complaint
- Respondent meeting criteria
- Subpoenas by Hearing Examiner
- Applicability of Florida Rules of Civil Procedure
- Standards for Resolving Factual Disputes
- Conciliation Process
- Hearing before Hearing Examiner
- Representation by Non-lawyer Advocate
- Enforcement by private person or by the State of Florida
- Enforcement of Wage Theft Violations

**The proposed ordinance excludes the United States Government; State of Florida; Miami-Dade County, the Public Health Trust of Miami-Dade County; and an Indian Tribe.**

### National Trends

According to a report by Progressive States Network<sup>1</sup>, there has been an increase crackdown by state governments on wage law violators. A few examples include:

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<sup>1</sup> The Progressive States Network was founded in 2005 to drive public policy debates and change the political landscape in the United States by focusing on attainable, progressive state actions. The

- Arizona and Ohio minimum wage ballot initiatives passed by voters in 2006 included new triple damages against employers violating their state wage laws.
- In 2008, Massachusetts made it the law, SB 1059, that triple damages will be mandatory for violations of that state's wage law.
- Responsible contracting laws in a few states and cities now deny public contracts or operating licenses to wage law violators. See Los Angeles Responsible Contractor Ordinance for one example and San Francisco's city minimum wage for provisions that authorize city agencies to revoke permits or licenses for businesses that violate the law.
- A number of jurisdictions are increasingly applying "theft of wages" statutes to enforce criminal sanctions against wage law violators. Many states already have "theft of wages" statutes on the books, so that all that is needed is to enforce these provisions. (See NELP's *Using Criminal Theft of Service Laws To Enforce Workers' Right to be Paid* (NELP) for more on how to use such criminal theft statutes or add them to a state's criminal code).
- In 2007, Minnesota and Colorado both enacted new laws cracking down on misclassification of employees as "independent contractors" to evade state wage laws.
- In 2008, legislatures in California, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maryland, Minnesota, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin all introduced new laws to crack down on employers misclassifying employees as independent contractors to evade wage laws.
- In 2008, Utah, SB 159 makes it fraud to misclassify an employee to avoid the obligation to obtain workers' compensation insurance coverage, and SB 189 establishes a council to study how to reduce costs resulting from the misclassification of workers.
- The New York Attorney General's office has aggressively pursued wage claims against joint employers, including against large supermarket and drugstore chains for unpaid wages due to delivery workers misclassified as independent contractors.
- Connecticut's 2007 law, Pub. Act. No. 07-89, provides that employers who misrepresent the number or type of their employees for purposes of the workers' compensation system, can be issued a stop work order and ordered to pay a fine of up to \$1,000. In 2008, Connecticut HB 5113 and SB 454 established a commission to review the problem of employer misclassification for purposes of avoiding obligations under state and federal labor, employment, and tax laws.

### **Workers Face Significant Barriers**

Employees with wage and hour complaints at times may face significant barriers in seeking a solution for violations. Because employment is at-will, most workers may fear employer reprisals for complaining about wage and hour violations. As a matter of fact, the U.S. Department of Labor reported a 25 percent drop in registered complaints from low-wage workers from 2001 through 2008.<sup>2</sup>

Also, in the face of government non-involvement, private lawsuits have become more popular, but employees bringing private lawsuits cannot bring class actions because of a unique federal

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Progressive States Network provides coordinated research and strategic advocacy. Progressive tracks legislation in all 50 states.

<sup>2</sup> As wage theft rises, states and cities crack down, December 17, 2009, *The Daily Chronicle, Chicago*.

law limitation in the federal Fair Labor Standards Act (FLSA) requiring each individual worker to affirmatively opt-in to a lawsuit by filing a written consent to sue with the court. This mechanism, not found in almost all other labor and employment laws, hampers the workers' ability to seek remedial action in courts.<sup>3</sup> Immigrant workers face an additional barrier to enforcing their rights if the employer threatens to or does in fact call in the Bureau of Immigration and Customs Enforcement ("ICE"), which has the power to detain and, in some cases, deport workers that do not have work authorization.<sup>4</sup>

**Question: What recourse may be available for workers in our community?**

- The South Florida Wage Theft Task Force, an alliance coordinated by the Florida Immigrant Coalition that includes immigrant rights organizations, women's and faith community groups, labor unions, legal services providers, a research institute, a childcare worker/employer alliance, and others, was founded in 2007 out of local Miami synergy around immigrants rights, the defense of day laborers and support for an emerging worker center.
- South Florida Interfaith Worker Justice (SFIWJ) is an association of many diverse religious leaders throughout Miami- Dade and Broward Counties who respond to the crisis of the working poor. Established in 1998, SFIWJ is one of over 60 affiliates of the national Interfaith Worker Justice network based in Chicago. SFIWJ's volunteer Board of Directors is comprised of faith leaders from various religious and ethnic traditions. SFIWJ advocates for the rights of low-wage workers, the majority of whom are immigrants.
- Florida Immigrant Coalition seeks equal rights for immigrants and integration into the civic and cultural life of our communities. They accomplish their mission through coordination of immigrant organizations and community education, organizing and advocacy.
- Florida Legal Services, Inc. (FLS) is a nonprofit organization founded in 1973 to provide civil legal assistance to indigent persons who would not otherwise have the means to obtain a lawyer. A statewide support center, dedicated to ensuring poor people have equal access to justice, FLS fulfills its mission primarily by working with local legal aid and legal service programs to improve their ability to provide legal assistance to those in need in their communities. FLS consults on enforcement initiatives related to wage and hour laws with a task force comprised of grassroots community groups, labor unions, service and advocacy organizations and researchers.

**Prepared by:** Michael Amador-Gil

Attachment (The Office of the Commission Auditor provides an examination on national data and trends pertaining to wage theft)

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<sup>3</sup> Age Discrimination in Employment Act and the Equal Pay Act adopt the FLSA's opt-in mechanism for collective actions.

<sup>4</sup> 29 U.S.C.A Section 216(b) (West 2007)

# **Wage Theft**

Prepared by the Office of the Commission Auditor

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January 12, 2010

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## **Introduction**

The Office of the Commission Auditor examined national data and trends pertaining to wage theft practices; what is wage theft and examples; what industries are impacted the most by wage theft; role of by the U.S. Department of Labor (DOL); current and proposed legislation; national efforts to curb these practices; and national and local statistics.

Over 100 million workers are supposed to be protected through the U.S. Department of Labor's Wage and Hour Division (WHD) to ensure workers are paid at least the federal minimum wage and overtime. However, of those 100 plus million workers, data indicates that the bottom half of the labor forces may be *robbed* or experience some form of wage theft every year.

The epidemic is receiving similar attention to the collapse of the implosion of the housing market. Due to the economic downturn, employers in health care, child care, retail, construction, hospitality and other industries, may become more creative and maneuver to cut costs even more by hiring workers they classify as "independent contractors" not covered by workplace laws.

In their annual reporting, the WHD shows they recovered more than \$185 million in back wages for over 228,000 employees in fiscal year 2008 to put the eight-year cumulative total of back wages collected by the agency at over \$1.4 billion. The agency concluded 28,242 compliance actions and assessed over \$9.9 million in civil money penalties.<sup>1</sup> The Economic Policy Foundation, a business-funded think tank, estimated that companies annually steal 19 billion dollars in unpaid overtime.

## **What is "Wage Theft"?**

Wage Theft is the unlawful under payment or non-payment of workers' wages. Additionally, wage theft violates the Davis-Bacon Act, Fair Labor Standards Act (FLSA) and the Copeland Act.

## **Examples of Wage Theft include:**

- Paying below the federal and state established minimum wage;
- Paying partial wages or not paying employee for all hours worked;
- Employers not keeping proper records of workers' hours;
- Failure to pay for work performed;
- Failure to pay overtime hours at time and a half pay for over 40 hour work weeks;
- Failure to pay final paycheck after employment is terminated;
- Forcing workers to work "off the clock";
- Employers keeping workers' tips and gratuities;<sup>2</sup>
- Classifying workers as "independent contractors" to avoid paying minimum wage, overtime and employers' share of FICA tax; and

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<sup>1</sup> Department of U.S. Labor. Found at: <http://www.dol.gov/whd/statistics/2008FiscalYear.htm>

<sup>2</sup> As of July 24, 2009, the direct hourly wage of "tipped employees" in Florida, is \$4.23. This is based on the \$7.25 minimum wage minus the 2003 tip credit of \$3.02. [www.floridajobs.org/minimumwage/index.htm](http://www.floridajobs.org/minimumwage/index.htm)



- Employers pressuring workers not to file worker’s compensation claims for injuries on the job to pay for medical care and missed days at work, forcing workers to pay for their treatment out of their own pocket or use health insurance.

**Wage Theft Impacts Everyone**

Myth: Wage Theft only affects disadvantaged workers like undocumented immigrants.

- Widespread National epidemic;
- Impacts government’s tax coffers;
- Impacts the economy by limiting spending power;
- Mostly affects low-wage labor market;
- Hourly employees; and
- Mostly affects agricultural, landscaping, janitorial, restaurant, garment manufacturing, retail, child care, home health care and many other workers.

**Statistics and Trends**

In this section, we analyzed national, state and local statistical data and trends. Also, several surveys reveal key characteristics of workplace violations that vary significantly by geographic area, industry, occupation, gender, race, and education.

The Low-Wage Industry table below suggests that the conditions are spreading from classic sweatshop operations to core employment sectors of the economy. At the same time, more foreign workers are seeking employment opportunities in this country. In combination, these trends reveal that current U.S. labor laws and government assistance programs may not be adequate to: (1) prevent and enforce violations; (2) provide free legal services to low-wage workers; (3) provide government assistance in the current economic downturn; and (4) curb gender and racial wage violation practices.

<b>2008 Low Wage Statistics Table</b>				
<b>Low-Wage Statistics</b>	<b>Industries</b>	<b>Cases</b>	<b>Back Wages</b>	<b>Employees</b>
<b>Agriculture</b>		1,600	\$2,116,712	5,397
<b>Day Care</b>		746	\$1,058,579	3,070
<b>Restaurants</b>		3,942	\$18,917,992	23,433
<b>Garment Manufacturing</b>		385	\$2,596,986	2,278
<b>Guard Services</b>		633	\$13,595,350	13,138
<b>Health Care</b>		1,302	\$11,403,813	15,768
<b>Hotels and Motels</b>		875	\$2,445,094	5,034
<b>Janitorial Services</b>		507	\$3,469,956	5,417
<b>Temporary Help</b>		309	\$1,945,163	3,368

2008 Low Wage Statistics Table				
Low-Wage Statistics	Industries	Cases	Back Wages	Employees
<b>Total Industries</b>	<b>Low-Wage</b>	<b>10,299</b>	<b>\$57,549,645</b>	<b>76,903</b>

Source: U.S. Dept. of Labor

The U.S. Census Bureau reports that an alarming number of people eligible for legal funded services (people living at or below 125 percent of the federal poverty level) grew to 53.8 million in 2008, up from 50.8 million in 2007. These figures only captured the beginning of the recession's start.<sup>3</sup> This includes workers fighting to obtain wages illegally denied to them.

**A key point in interpreting the findings above is that across the country, for several decades, a growing number of low-wage workers have and continue to experience some form of violation, despite additional resources and stricter policies from federal, state and local levels.**

### Findings

Southern states show that Latino workers are experiencing wage theft at an alarming rate: 80 percent reported wage theft; and many of them do not know which government agencies enforce labor laws.<sup>4</sup> Workers that do seek help have been turned down, according to a report by Legal Services Corporation. Almost one million cases per year are currently being rejected because of the programs lack of sufficient resources.<sup>5</sup>

- One national survey covering 2,660 day laborers at 254 hiring sites in 139 municipalities in 20 states and Washington D.C. found that the overwhelming majority of day laborers were from Latin America. Undocumented day laborers are particularly susceptible to wage violations.<sup>6</sup>

Trends in enforcement show that between 1975 and 2004 the number of wage and hour investigations by the U.S. Department of Labor declined 14 percent; compliance actions completed declined by 36 percent; total of back wages assessed grew by 7 percent; and workers receiving back wages declined by 24 percent.<sup>7</sup>

Between 2003 and 2006, Fair Labor Standards Act complaints filed in federal court doubled, reaching 4,203. In 2007 alone, complaints increased nearly 60 percent to 7,310. State court wage-and-hour lawsuits also reached epidemic proportions; *states like California and Florida*

<sup>3</sup> Brennan Center for Justice at New York University of Law

<sup>4</sup> Under Siege, Life for Low-Income Latinos in the South

<sup>5</sup> Documenting the Justice Gap in America, The Current Unmet Civil Legal Needs of Low-Income American, September 2009. Legal Services Corporation is an institution charged by the U.S. Congress and is federally funded to assist those who would otherwise be unable to afford adequate legal counsel.

<sup>6</sup> Day Laborers in the U.S.; UCLA/University of Illinois, Jan. 2006

<sup>7</sup> Trends in Wage and Hour Enforcement by the U.S. Dept. of Labor, Economic Policy Brief, Sept. 2005

*led with more than 1,000 each annually. Average class-action settlements have reached \$23.5 million under the FLSA and \$24.4 million under state wage-and-hour laws.*<sup>8</sup>

- In 2008, 197,000 employees received a total of \$140.2 million in minimum wage and overtime back wages as a result of FLSA violations.
- The WHD collected \$57.5 million in back wages for approximately 77,000 workers in low-wage industries—an increase of over 77 percent of back wages collected during fiscal year 2001 for violations in the same group of low-wage industries. The number of employees receiving back wages in the nine tracked low-wage industries increased nearly 10 percent over those receiving back wages in FY 2001. WHD expended approximately 35 percent of its FY 2008 enforcement hours on cases in the nine low-wage industries listed below.

*Low-wage labor workers surveyed in major U.S. cities earning minimum wage, exposed violations most common in the following industries: (1) apparel and textile manufacturing; (2) personal and repair services; and (3) private households. In all three industries, more than 40 percent of workers were paid less than the minimum wage. Minimum wage violation rates were substantially lower in residential construction (13 percent); social assistance and education (12 percent); and home health care (12 percent). Industries such as retail, drug and grocery stores fell into the middle of the distribution, with about a quarter of their workers experiencing a minimum wage violation.*<sup>9</sup>

Also, a low-wage worker earning minimum wage, when compared to a U.S-born worker, does not have an eight hour a day, five days a week job. Most low-wage workers engage in erratic work schedules that may lead to inconsistent and unprotected jobs, increasing their exposure of *gender and racial wage violations*.

- Most significantly, women who are unauthorized immigrants, were more likely than men to experience minimum wage violations;
- Foreign-born Latino workers had the highest minimum wage violation rates of any racial/ethnic group;
- Violation rate for African-American workers was triple that of their white counterpart; and<sup>10</sup>
- Workers with high levels of education were still at significant risk.

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<sup>8</sup> Employment Law: The Shifting Legal Landscape, No. 19, 2008; Human Resources Executive; Garry Mathiason

<sup>9</sup> Broken Laws, Unprotected Workers; Violations of Employment and Labor Laws in U.S. Cities, page 30. In 2008, a survey of 4,387 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City was conducted. Staffs at the UIC Center for Urban Economic Development, the UCLA Institute for Research on Labor and Employment, and the National Employment Law Project provided support for this survey.

<sup>10</sup> Ibid, page 48.

## **Case Study**

According to the New York Times, “Broken Laws, Unprotected Workers,” a study conducted in 2008, is the most comprehensive examination of wage-law violations in the last decade. The study consisted of a survey of workers in low-wage industries in Chicago, Los Angeles, and New York City. By focusing on the three largest U.S. cities the study was able to show that although to different degrees, everyone is at risk of being impacted in some way throughout the nation. It is not only undocumented immigrant workers or vulnerable groups as previously assumed.

The study was conducted before the brunt of the recession hit and found that 68 percent of the 4,387 workers surveyed had experienced at least one pay-related violation in the previous work week. The study found that although women, immigrants and people of color are disproportionately affected by workplace violations, the industry and type of job is generally the predictor of the violations rather than the worker’s demographic characteristics.

The study also addresses the various forms of wage theft such as, the right to be paid at least the minimum wage, the right to be paid for overtime hours, the right to take meal breaks, access to workers’ compensation when injured on the job without fear of retaliation. The findings are alarming due to the extent to which many employment and labor laws are regularly violated, thus severely impacting the low-wage labor force in the nation’s largest cities. Many small businesses stated they are forced to violate wage laws in order to remain competitive.

The study breaks down three findings in the following categories:

### **Finding 1: Workplace Violations are Severe and Widespread in Low-Wage Labor Markets**

The study focused on the following violations: minimum wage violations, overtime violations, “Off the Clock” violations, meal break violations, pay stub violations and illegal deductions, tipped job violations, retaliation by employers, workers’ compensation violations.

### **Finding 2: Job and Employer Characteristics is Key to Understanding Workplace Violations**

Violation rates vary significantly by industries. For example, minimum wage violations are most common in apparel and textile manufacturing, personal and repair services and in private households. Childcare workers and cashiers had very high minimum wage and overtime violations. Additionally, workers paid in cash or who were paid a flat weekly rate had much higher violation rates than those who were paid a standard hourly rate or by company check.

### **Finding 3: All Workers are at Risk of Workplace Violations**

The study found that wage theft violations occurred in all demographic groups not specifically by sex, ethnicity, or immigrant status.

The study suggests that three principles should be the basis of a new policy agenda to protect the rights of workers in America:

- Strengthen government enforcement of employment labor laws. Besides funding and additional staffing, new strategies are necessary to address the fact that violations are becoming standard practice throughout the low-wage labor industries.
- Update legal standards for the 21<sup>st</sup> century labor market. Raising the minimum wage, updating health and safety standards, eliminating exclusions that deny workers coverage, and strengthening the right of workers to organize through labor law reform are all key elements. America's employment and labor laws are out of date and some occupations and industries are partly or completely exempted from coverage. Even the existing protections are failing millions of workers under the current standards.
- Establish equal status for immigrants in the workplace. Any policy initiative to reduce workplace violations must prioritize equal protection and equal status in national immigration reform.

### **Federal Legislation**

Addressing Wage Theft at the Federal Level: DOL administers and enforces more than 180 federal laws which cover many workplace activities for about 10 million employers and 125 million workers.<sup>11</sup> Specifically, the WHD is responsible for enforcing the federal labor laws that include minimum wage, overtime pay, recordkeeping, youth employment and special employment, family and medical leave, migrant workers, lie detector tests, worker protections in certain temporary worker programs, and existing wages for government services and construction contracts.<sup>12</sup> The major statutes and regulations administered by the DOL WHD pertaining to wage theft enforcement include the following:

- FLSA;
- Davis-Bacon Act; and
- Copeland Act.

FLSA: The FLSA was established in 1938 and prescribes standards for the basic minimum wage and overtime pay for most private and public employment. Since 1938, the FLSA has been amended numerous times to reflect a minimum wage rate increases, specify what type of time was considered compensable work time (Portal-to-Portal Act 1947), making it illegal to pay workers lower wages on the basis of their sex (Equal Pay Act 1963), prohibit employment discrimination against persons 40 years of age or older (Age Discrimination in Employment Act 1967), include expanded coverage to other state and local government employees (1974 FLSA), provide migrant and seasonal farm workers with protections of pay and working conditions (Migrant and Seasonal Agricultural Worker Protection Act 1983), and provide eligible employees up to 12 weeks of unpaid, job protected leave for certain family and medical conditions (Family and Medical Leave Act 1993).

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<sup>11</sup> U.S Department of Labor website. Found at: [www.dol.gov](http://www.dol.gov) December 2009.

<sup>12</sup> Ibid.

The FLSA requires employers to pay covered employees (not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half times the regular rate of pay). For non-agricultural operations, it restricts the hours children under age 16 can work and forbids the employment of children under age 18 in certain jobs regarded as dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours in certain jobs regarded as dangerous.<sup>13</sup>

**Employee Rights under FLSA:** Employees may find out how to file a complaint by contacting the local WHD Office or by calling the program's toll-free help line at 1-866-4USWAGE (1-866-487-9243). Additionally, an employee may file a private suit, generally for the previous two years of back pay (three years in the case of a willful violation) and an equal amount as liquidated damages, plus attorney's fees and court costs.

**Penalties/Sanctions under FLSA:** The DOL uses a variety of remedies to enforce compliance with the Act's requirements. The WHD investigators upon identifying a violation recommend changes in employment practices to bring the employer into compliance, and they request the payment of any back wages due to employees. It is considered a violation of the FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act.

**Davis-Bacon Act (DBRA):** The DBRA act was established in 1931 and requires all contractors and subcontractors performing on federal contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics. The DBRA labor standards must be included in the contracts. Contractors and subcontractors on prime contracts in excess of \$100,000 are to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.<sup>14</sup>

Since 1931, DBRA has been amended three times: First, in 1935, to ensure that contractors bidding on public works projects would not lower wages in order to achieve a lower bid; Secondly, in 1964, to include fringe benefits in the calculation of prevailing wage rates; and Lastly, in 1994, to include the construction, renovation or repair of buildings used by Head Start programs be subjects to DBRA standards.

**Employee Rights under DBRA:** The DBRA provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the DOL, for the type of work performed. The WHD accept complaints of alleged DBRA violations.

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<sup>13</sup> U.S Department of Labor website. Found at: [www.dol.gov/compliance/guide](http://www.dol.gov/compliance/guide) December 2009.

<sup>14</sup> Ibid.

Penalties/Sanctions under DBRA: Contractors or subcontractors found not in compliance while performing work on Davis-Bacon covered projects may be subject to contract termination and debarment from future contracts for up to three years. Additionally, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages.<sup>15</sup> Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.<sup>16</sup>

Copeland Act (C.A): The C.A. was established in 1934, and it precludes a federal contractor from inducing any employee to sacrifice any part of the compensation required. The "Anti-Kickback" section of the C.A. applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction, prosecution, completion, or repair of any public building or public work, except contracts for which the only federal assistance is a loan guarantee. The regulations pertaining to C.A. payroll deductions and submittal of the weekly statement of compliance apply only to contractors and subcontractors performing on federally funded contracts in excess of \$2,000 and federally assisted contracts in excess of \$2,000 that are subject to federal wage standards.<sup>17</sup>

Employee Rights under C.A.: The provisions of the C.A. give covered workers on federal contracts the right to receive the full pay to which they are entitled for the work they perform and also gives such workers the right to receive pay on a weekly basis. The WHD accepts complaints of alleged C.A. wage violations.<sup>18</sup>

Penalties/Sanctions under C.A.: Any contractor or subcontractor who induces an employee working on a covered contract to give up any part of the compensation to which he or she is entitled is subject to a \$5,000 fine, or imprisonment for up to five years, or both. Willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment.<sup>19</sup>

Recent Findings of Wage Theft: There were three separate testimony/reports issued by the U.S. Government Accountability Office (U.S. GAO) pertaining to the DOL WHD process for enforcement and investigations of Wage Theft complaints as inadequate leaving low wage workers vulnerable to wage theft. The three reports issued by GAO within the last 17 months include the following: GAO-08-973T, GAO-09-458T and GAO-09-629.<sup>20</sup>

### **GAO-08-973T**

This report highlights findings from GAO's investigation of WHD's process for investigating and resolving wage and hour complaints. The investigation was comprised of data obtained from WHD for over 70,000 closed cases from fiscal years 2005 to 2007. The GAO concluded that it had identified cases where initial screening by WHD officials incorrectly rejected valid

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<sup>15</sup> U.S Department of Labor website. Found at: [www.dol.gov/compliance/guide](http://www.dol.gov/compliance/guide) December 2009.

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> U.S. Government Accountability Office website. Found at: [www.gao.gov/](http://www.gao.gov/)

complaints due to reliance of employer documentation, failure of WHD investigator to locate employers implicated in complaints, WHD investigations were limited to phone calls made to the complainant's employer, WHD investigations not initiating until one year from time of complaint (subjected the case to be dropped because of the two-year statute of limitations).<sup>21</sup>

#### **GAO-09-458T**

This report highlights the findings of a follow up investigation performed at the request of the Committee on Education and Labor (House of Representative) which directed the GAO to test the WHD intake process, provide additional case studies (10 GAO fictitious complaints) of inadequate WHD response to complaints and assess the effectiveness of WHD complaint intake process.<sup>22</sup> The investigation revealed slow response times, failed conciliation attempts, instance of WHD investigator lying about investigative work and did not investigate GAO's fictitious complaint, investigation were between 2-5 months.

GAO's final assessment of WHD intake process ineffective to the extent that it discourages wage theft complaints, investigations are not fully processed nor compel employers to pay, many WHD offices did not properly record unsuccessful conciliations and WHD investigations were frequently delayed by months or years. However, GAO identified that once complaints were recorded and assigned a case investigator, the cases were adequately investigated.<sup>23</sup>

#### **GAO-09-629**

This report summarizes the findings of GAO-09-458 and provides recommendations for improving the WHD complaint intake and investigation process. The GAO assessment includes removing the statute of limitations of the FLSA (two years from the date of the violation) to prevent employees from losing back wages due to delays of WHD investigations (GAO encountered in several WHD offices backlog of investigations from high volume of complaints. In addition to the above-mentioned assessments, the GAO provided additional recommendations for executive actions to include:

- Administrator to reassess the current policies and processes to better ensure relevant case information is recorded in WHD database;
- Provide assurance that WHD personnel interacting with complainants' and employers adequately capture and investigate allegation of labor violations and provide appropriate customer service;
- Explore the implementation of automated search tools to WHD personnel to better assist in investigations;
- Information verification as it pertains to employers under investigations (IRS and other agencies); and
- Provide WHD with adequate human capital and resources available to investigate and handle volume of wage theft complaints.

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<sup>21</sup> U.S. Government Accountability Report GAO-08-973T, July 15, 2008.

<sup>22</sup> U.S. Government Accountability Report GAO-09-458T, March 25, 2009.

<sup>23</sup> U.S. Government Accountability Report GAO-09-458T, March 25, 2009.



The Secretary of Labor, Hilda L. Solis issued a news release on March 25, 2009 regarding the GAO Wage and Hour Division Enforcement, to re-state her commitment to enforcement of wage theft by adding 250 new investigators to its field offices to refocus on the agency's enforcement responsibilities.<sup>24</sup>

U.S. Representative George Miller (D-CA), the chairman of the House Education and Labor Committee issued a press release introducing the "Wage Theft Prevention Act" (H.R 3303). The press release explains that the bill is based on GAO-09-458 recommendations that will ensure claims investigation delays will not result in permanent loss of back pay for workers.<sup>25</sup>

### **State Legislation**

Addressing Wage Theft at the State Level: The DOL WHD State Labor Office Contact for Florida is Cynthia R. Lorenzo, Director of the Agency for Workforce Innovation.<sup>26</sup> The Agency for Workforce Innovation is Florida's lead state workforce agency and directly administers the state's Labor Market Statistics program, unemployment, compensation, Early Learning and various workforce development programs.<sup>27</sup>

The Florida Statutes provides for wage protections under Chapter 448 General Labor Regulations which include terms and conditions of employment, notification of the state minimum wage and employee remedy and relief of wage violations. Additionally, Article X, Section 24, Constitution of the State of Florida sets forth provisions that address the minimum wage rates, remedy and enforcement of wage violations.

### **Recent Rulings:**

- New York City, February 2009, a leading chain of gourmet grocery stores agreed to pay nearly \$1.5 million in unpaid wages to 550 workers.
- New York City, 2008- Federal Judge ordered Saigon Grill restaurant to pay 36 of its delivery workers \$4.6 million in owed wages; they had routinely worked 13-hour shifts for as little as \$1.60 per hour.
- L.A. City Attorney filed criminal charges against owners of four car washes, charging them with failure to pay the minimum wage and provide employees with breaks.
- Illinois, 2008 – Temporary Staffing Agency settled a class action suit with over 3,300 workers, totaling close to half-a-million dollars.
- Wal-Mart 2008, settled 63 cases in 42 states. The company forced employees to work "off the clock" (requiring unpaid work after employees had clocked out at the end of their official shifts. The settlement totaled \$352 million in unpaid wages and involved hundreds of thousands current and former employees.

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<sup>24</sup> United States Department of Labor Website. Found at: <http://www.dol.gov/opa/media/press>

<sup>25</sup> Committee on Education and Labor Website, Found at: <http://edlabor.house.gov/newsroom/2009>

<sup>26</sup> United States Department of Labor Website. Found at <http://www.dol.gov/whd/contacts/state>

<sup>27</sup> Agency for Workforce Innovation Website, Found at: <http://www.floridajobs.org>

- Federal Express drivers spent years pursuing a legal claim for employee status as they were illegally classified as “independent contractors” receiving no benefits, lost protection of most employment and labor laws, had to pay all of their job related expenses such as fuel, vehicle maintenance and insurance. In October 2008, the court awarded more than 200 FedEx drivers in California \$14.4 million to compensate for the violations.

### **South Florida**

In Miami-Dade, dozens of workers each week, many on the low end of the pay scale, file claims for overtime and minimum wage violations in Florida state and federal courts. According to the Administrative Office of the United States Courts, for the past five years the Southern District of Florida alone has averaged 28.7% of all Fair Labor Standards Act cases filed in the United States.<sup>28</sup>

The Miami-Dade Equal Opportunity Board (EOB) has experience in assisting workers and dealing with employers who do not follow the law.<sup>29</sup> The process is cost-effective and often cases can be resolved with an initial investigation and mediation. The EOB also has the power to fine and subpoena employers, which is an important enforcement mechanism. During FY 2007-08, the EOB obtained \$372, 028 in back wages and other benefits for discrimination victims. Since its establishment, the EOB has obtained more than \$10,000,000 in back pay and other benefits for victims. *However, the EOB has not been delegated the authority to deal with wage theft.*

### **Conclusion**

As this examination demonstrates, workers in the bottom half of the economy may be exposed to unsuitable working conditions that include no pay or minimal pay. Some of them find themselves being discriminated against and exploited with nowhere to turn. Federal, state and local governments are embarking in outreach efforts and modifying legislation and strengthening enforcement to curb these cruel and unjust practices.

There is an indirect impact on federal and state programs, businesses, and law-abiding employers. It can reduce revenue that supports such programs as Social Security, Medicare, unemployment insurance, and workers’ compensation. Further, employers with responsible business practices may be undercut by competitors to reduce their costs, for example, by not paying payroll taxes or providing benefits to workers.

The Miami-Dade Board of County Commissioners (BCC) has declared an overall interest in their authority over wages and benefits in FY 2009-10.

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<sup>28</sup> Case No 07-80829-CIV-RYSKAMP/VITUNAC. Order Adopting the Report and Recommendations

<sup>29</sup> The EOB is a quasi-judicial as well as an advisory board charged with the enforcement of Miami-Dade County’s Human Right Ordinance, codified as Chapter 11A, as amended, Articles I, II, III, and IV. The Human Ordinance makes it unlawful to discriminate against any person in Miami-Dade County in employment, public accommodations, credit and financing practices and housing accommodations. The EOB also enforces the Miami-Dade County Family Leave Ordinance and the Domestic Violence Leave Ordinance.

- There are presently no specific rules mandating procedures in Miami-Dade County government with regard to addressing, enforcing and preventing wage theft. The stated purpose of the proposed ordinance is to prevent and/or eliminate employees' working in Miami-Dade County, which are underpaid or not paid for work performed.

MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
OFFICE OF THE COMMISSION AUDITOR



Legislative Notes

**Agenda Item:** 3(A)  
**File Number:** 093359  
**Committee(s) of Reference:** Government Operations Committee  
**Date of Analysis:** January 12, 2010  
**Type of Item:** Resolution  
**Commission District:** 2

### Summary

This resolution authorizes an execution of a Sub-Lease Agreement for office space located at 2671 N.W. 28 Street, Miami, Florida with Fannie Mae, a Federally Chartered Corporation and a Government Sponsored Enterprise. As part of Fannie Mae's efforts to assist distressed borrowers at risk of foreclosure, the company is opening the Fannie Mae Miami-Dade Mortgage Help Center.

The County's General Services Administration (GSA) proposes to sub-lease a portion of an existing leased facility for use of this existing space. The County originally leased this space for Team Metro in March 7, 2006, which ceased operations at this location on July 31, 2009. The space has been vacant since that time. If approved, the sub-lease will end on November 30, 2012.

**According to GSA staff, through January 31, 2010, the County will have paid \$51,182.55 since the property was vacated on August 1, 2009. The County will continue to be responsible for \$3,838.64/month under the proposed sub-lease until November 2010. The County will begin paying a new lease amount in FY 2010-11 of \$4,007.64. (See chart below)**

**The sub-tenant will be responsible for a base rent of \$4,349.92. In addition to the base rent, the sub-tenant will annually pay for its pro-rata share of any increase in real estate taxes and insurance over the 2006 base year. The sub-tenant will also pay a systems furniture of \$335.13 per month and reimburse for any additional services.**

There is an option for Fannie Mae to take the remaining space during the term of the lease.

### Comments

The original lease agreement between the County and the owner includes a 4% increase each year. The sublet takes that into account and the County essentially loses whatever the monthly rate with the subtenant is. Overall, taking the sublet to the end of the contract term without cancellation, the County will pay \$309,122 of which the subtenant's total contribution is **\$172,127.09**.

Date	County Lease	Fannie Mae Base Rent	GSA Syst. Furn.	GSA Admin. Fee	Total of Sub-Charges	Fannie Mae Total	County Net Payment
Feb-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Mar-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Apr-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
May-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Jun-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Jul-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Aug-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Sep-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Oct-10	\$8,697.69	\$4,349.92	\$335.13	\$174.00	\$509.13	\$4,859.05	\$3,838.64
Nov-10	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Dec-10	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Jan-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Feb-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Mar-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Apr-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
May-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Jun-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Jul-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Aug-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Sep-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Oct-11	\$9,045.60	\$4,521.95	\$335.13	\$180.88	\$516.01	\$5,037.96	\$4,007.64
Nov-11	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Dec-11	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Jan-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Feb-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Mar-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Apr-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
May-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Jun-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Jul-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Aug-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Sep-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Oct-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
Nov-12	\$9,407.42	\$4,702.92	\$335.13	\$188.12	\$523.25	\$5,226.17	\$4,181.25
<b>Totals</b>	<b>\$309,122.86</b>	<b>\$154,550.64</b>				<b>\$172,127.09</b>	<b>\$136,995.78</b>

Prepared by: Michael Amador-Gil