

# MEMORANDUM

Agenda Item No. 7(A)

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**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

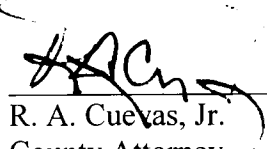
**DATE:** (Second Reading 2-18-10)  
December 15, 2009

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance establishing  
Chapter 22 of the Code;  
prohibiting wage theft,  
providing administrative  
procedures and private cause  
of action for wage theft

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The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Natacha Seijas and Co-Sponsors Commissioner Audrey M. Edmonson and Vice-Chairman Jose "Pepe" Diaz.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

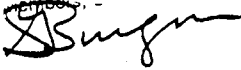
RAC/jls

# Memorandum



**Date:** February 18, 2010

**To:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**From:** George M. Burgess   
County Manager

**Subject:** Ordinance establishing Chapter 22 of the Code - Prohibiting Wage Theft

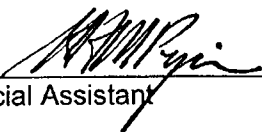
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The proposed legislation establishes Chapter 22 of the Code and applies to private sector employees and employers, prohibits wage theft, and provides administrative procedures and private cause of action. It is anticipated that the Department of Small Business Development will be responsible for implementation and administration of this legislation and will result in a fiscal impact to Miami-Dade County.

The exact fiscal impact is difficult to determine at this time and will vary based upon the number of claims per year. The Department of Labor (DOL) has indicated that employees from small-to medium sized businesses are the primary affected parties. Given the current economic conditions it is expected that this legislation will generate considerable interest. Currently DOL receives approximately 50 calls per day related to complaints where violations can be easily discerned and administrative action taken without the need for investigation. One in three of these complaints are not within DOL's jurisdiction and would be covered by the proposed legislation. Therefore, it is anticipated that the Department of Small Business Development will experience an initial volume of approximately 16 complaints per day.

To conduct the claim intake and analysis, administrative hearing coordination, and reporting functions for the anticipated volume, one additional position is necessary at a cost of \$75,000 per fiscal year. The cost for a hearing examiner is estimated at \$3,500 per hearing. In addition, a one-time database modification must be made at a cost of \$2,800 to ensure appropriate logging, tracking and reporting of cases.

The proposed legislation is designed to recover actual administrative processing and hearing costs from the employer if a violation is found, therefore it is anticipated that some cost recovery is possible.

  
Special Assistant



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** February 18, 2010

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 7(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Agenda Item No. 7(A)

Veto \_\_\_\_\_

2-18-10

Override \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

ORDINANCE ESTABLISHING CHAPTER 22 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING WAGE THEFT, PROVIDING ADMINISTRATIVE PROCEDURES AND PRIVATE CAUSE OF ACTION FOR WAGE THEFT PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 22, Sections 1-10 of the Code of Miami-Dade County, Florida, is hereby established to read as follows:<sup>1</sup>

**CHAPTER 22 - WAGE THEFT**

**Sec. 22-1. Declaration of Policy.**

**It is hereby declared to be the policy of Miami-Dade County in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent wage theft. Eliminating the underpayment or nonpayment of wages earned by persons working in the County serves the public purpose by promoting economic security and dignity for those working in the County; by promoting business and economic development through the elimination of unfair economic competition by unscrupulous businesses that do not pay or that underpay their employees; and by relieving the burden on the public that subsidize unscrupulous employers whose employees are forced to rely on public assistance because of unpaid or underpaid wages.**

**Sec. 22-2. Definitions.**

<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

(a) *Employee* shall mean a natural person who performs work within the geographic boundaries of Miami-Dade County while being employed by an employer, but shall not include any bona fide independent contractor.

(b) *Employer* shall include any person who, acting either individually or as an officer, agent, or employee of another person, acts directly or indirectly in the interest of a person or entity employing an employee;  
but such term does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) The State of Florida;
- (3) Miami-Dade County;
- (4) The Public Health Trust of Miami-Dade County, or
- (5) An Indian Tribe.

(c) The meaning of *employ*, including as used in the term *employment*, shall include to suffer or permit to work.

(d) *Independent contractor* shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.

(e) *Wage rate* shall mean any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether daily, hourly, or by piece but in all cases shall be equal to no less than the highest applicable rate established by operation of any federal, state or local law.

(f) *Reasonable time* shall be presumed to be no later than fourteen calendar days from the date on which the work is performed but may be modified for a period not to exceed thirty days by an express agreement between the employer and the employee which has been reduced to writing and signed by the employee.

(g) *Threshold amount* shall mean sixty dollars (\$60).

(h) *Liquidated damages* shall mean twice the amount a respondent employer is found to have unlawfully failed to pay the complainant employee. Where an employee is awarded treble damages for wage theft violations, liquidated damages are awarded in addition to back wages in order to compensate

for the economic losses suffered by reason of the employee not receiving their wage at the time it was due.

**Sec. 22-3. Wage theft violations.**

For any employer to fail to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer.

**Sec. 22-4. Procedures for wage theft complaints.**

**(1) *Filing wage theft complaint.***

**(a) *Threshold amount.*** In order for a complaint to be submitted to the County by, or on behalf of, an aggrieved employee, that employee must allege a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.

**(b)** Either of the following may file a written, signed complaint with the County using the procedures set forth in an Implementing Order:,

**(i)** an employee aggrieved by a wage theft action prohibited by this article; or

**(ii)** any entity a member of which is aggrieved by a violation of this article.

**(c)** A signed complaint for wage theft must be filed with the County in the manner prescribed by Implementing Order no later than one (1) year after the last date upon which the complainant employee performed the work for a respondent employer with regard to which the employee alleges a violation of this article has occurred ("filing deadline"); however, with respect to alleged ongoing violations, once a complaint has been made in compliance with the filing deadline, the County's

**enforcement capacity is limited only by the applicable statute(s) of limitations.**

**(d) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent or respondents and for the County to determine both that an allegation of wage theft has been made and that the threshold amount has been met.**

***(2) Respondent.***

**(a) Upon the filing of any complaint, the County shall promptly determine that the wage theft complaint alleges wage theft, names at least one respondent and meets the threshold amount criterion. The duty of the County in determining whether a complaint meets this criterion is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.**

**(b) Upon making such determination, the County shall serve the complaint and a written notice on the respondent or person charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties including, but not limited to the right to a due process hearing on the matter before a Hearing Examiner and that the respondent may be responsible for the costs of the Hearing Examiner and other enforcement costs. Such service shall be by certified mail.**

**(c) Each respondent shall file an answer to the complaint with the County not later than twenty (20) days after receipt of the complaint and notice from the Director.**

***(3) Subpoenas.***

**(a) If a Hearing Examiner is appointed, any party may request that a subpoena be issued by the Hearing Examiner. Witnesses summoned by subpoena of the Hearing Examiner shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by**

**subpoena issued at the request of a party shall be paid by the party.**

**(b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Hearing Examiner to revoke or modify the subpoena. The Hearing Examiner shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to the matter, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.**

**(c) In the case of the contumacy or refusal to obey a subpoena, the Hearing Examiner or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida;**

**(d) In any enforcement proceedings authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures;**

**(e) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.**

**(f) Any person who, makes or causes to be made any false entry or false statement of fact in any report, account, record or other document submitted to the Hearing Examiner pursuant to its subpoena or other order, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.**

***(4) Applicability of Florida Rules of Civil Procedure.***

**(a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time**



prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.

(b) All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

*(5) Standards for Resolving Factual Disputes.*

(a) Adequate Records. When the following three conditions are met:

(i) where by operation of some other statute or regulation, a respondent employer has an obligation to keep records of an employee's hours worked and or records of compensation provided to an employee; and

(ii) where such records are imprecise, inadequate or do not exist; and

(iii) where a complainant employee presents sufficient evidence to show, as a matter of just and reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done;

(b) Then the burden of imprecision falls on the respondent whose obligation it was to keep accurate records and the respondent must come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the complainant's evidence; if the respondent fails to meet this burden, the Hearing Examiner or any court, whichever is applicable, may award approximate damages based on the complainant's evidence.

*(6) Conciliation.*

(a) It is the policy of the County to encourage conciliation of charges. The County will work with the parties in an attempt to conciliate the agreement. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to the referral of the matter to a Hearing Examiner.

**(b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant.**

**(c) Whenever a party believes that the other party has breached a conciliation agreement, the aggrieved party may file a civil action in a court of competent jurisdiction for enforcement of such agreement.**

**(d) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of violation.**

***(7) Hearing before Hearing Examiner.***

**(a) Within fifteen (15) days after the service of the Complaint on the respondent, and after determination that the complaint meets the threshold and other requirements, any party may submit a written request for a hearing before a Hearing Examiner. The County shall appoint a Hearing Examiner that it deems to be qualified to hear wage theft matters. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Examiner shall have the authority to administer oaths, issue subpoenas, compel the production of and receive evidence. The Hearing Examiner shall have the authority to consolidate two or more complaints into a single hearing where such complaints name the same respondent(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the Hearing Examiner in wage theft matters is subject to appeal in a court of competent jurisdiction.**

**(b) In any hearing before the Hearing Examiner pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.**

**(c) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.**

**(d) The Hearing Examiner may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.**

**(e) Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties setting forth written findings of fact and conclusions of law.**

**(f) In any proceeding under this article, the burden of proof by a preponderance of the evidence rests upon the complainant.**

***(8) Representation by Non-lawyer Advocate.***

**Any person may be represented by counsel in any proceeding herein. Any party, including corporate entities, as an alternative to counsel, may be represented by a non-lawyer advocate authorized by that party in any proceeding herein unless specifically disallowed by the Hearing Examiner for good cause.**

***(9) Enforcement by private persons or by the State of Florida.***

***(a) Enforcement by private persons.***

**(i) If during the pendency of a wage theft violation complaint but prior to the issuance of a final decision by a Hearing Examiner, a complainant employee brings a private action in their own right, whether under state law, federal law, or both, in any state or federal court to seek unpaid wages based upon the same facts and allegations as the complainant employee's complaint to the County, or affirmatively or by consent opts to participate in any such litigation, that complainant employee's complaint of wage theft shall be deemed withdrawn with respect to any respondent employer named as a defendant in such court action. This section shall be interpreted narrowly so as to leave unaffected**

**any cumulative rights which were not the subject of a complaint employee's complaint.**

**(ii) The County, upon becoming aware of any private action described herein shall advise the complainant and any respondent subject to the private action in writing within fifteen (15) days of this provision and its effect on the complaint. Within thirty (30) days of the issuance of such notice, the County will dismiss, with prejudice, the complainant's complaint only with respect to the respondent or respondents who are named as a defendants to the private action.**

**(b) *Enforcement by the State of Florida.* If at any time during the pendency of a complaint of wage theft, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage violations involving the same facts as the complainant employee's complaint to the County, the County will dismiss, either with or without prejudice, the complainant employee's complaint with respect to the respondent or respondents named in such State enforcement action. The County shall advise the complainant and any respondent of such dismissal.**

#### **Sec. 22-5. Enforcement of Wage Theft Violations**

##### **(1) *Order Issued.***

**At the conclusion of a hearing and upon a finding of a wage violation, the Hearing Examiner shall issue a written order as follows:**

**(a) if the preponderance of the evidence demonstrates a wage theft violation, the Hearing Examiner shall order the employer to pay wage restitution to the affected employee in an amount equal to three times the amount of back wages that the respondent employer is found to have unlawfully failed to pay the complainant employee; this treble amount shall include the back wages in addition to liquidated damages as compensation for the economic losses suffered by reason of the employee not receiving their wage at the time it was due; and**

**(b) the County shall order the employer to pay to the Board of County Commissioners an assessment of costs in an amount**

**not to exceed actual administrative processing costs and costs of the hearing.**

***(2) Failure to Comply with Initial Order.***

**If the County finds that any respondent employer has failed to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County shall issue a further written order on the respondent employer as follows:**

**(a) the County may, upon request of the respondent, grant the respondent an additional forty-five (45) days to comply with any portion of the order, unless such an extension has previously been granted; and**

**(b) the County shall order the employer, in addition to wage restitution ordered, to pay the prevailing complainant employee an amount equal to the applicable interest rate which accrues on the full amount of treble damages from the date upon which the finding of wage violation was made until the date upon which the amount is paid in full; and**

**(c) the County shall order the employer, in addition to assessment of costs ordered, to pay to the Board of County Commissioners an amount equal to the applicable interest rate which accrues on the assessment of costs from the date upon which the Hearing Examiner's order is issued until the date upon which the amount is paid in full; and**

***(3) Joint and Severable Liability.***

**In any order issued by the Hearing Examiner, the County may specify two or more respondents as jointly and severally liable for any amount payable to the complainant or the County or both; however, the total amount the complainant or the County may receive from jointly and severally liable respondents shall not exceed the total amount for which respondents are jointly and severally liable.**

***(4) Cumulative Rights Preserved.***

**Nothing in this Article shall be construed to limit, preclude or in any way abrogate the cumulative rights or remedies available to employees at common law or by other statute which were not the subject of a complaint employee's complaint or the County's enforcement actions; such cumulative rights which shall be unaffected by the provisions of this Article unless they are made the subject of a complaint or the County's enforcement action, shall include but shall not be limited to rights related to the violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.**

**Sec. 22-6. Severability and Construction.**

**If any section, subdivision, sentence, clause, phrase or other portion of this local law, or the application of this amendment to any person or circumstance, is for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this subchapter, which remaining portions shall remain in full force and effect.**

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Eric A. Rodriguez

Prime Sponsor: Commissioner Natacha Seijas  
Co-Sponsor: Commissioner Audrey M. Edmonson  
Co-Sponsor: Vice-Chairman Jose "Pepe" Diaz

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



Legislative Notes

**Agenda Item:** 7(A)  
**File Number:** 093228  
**Committee(s) of Reference:** Board of County Commissioners  
**Date of Analysis:** February 2, 2010  
**Type of Item:** Ordinance  
**Prime Sponsor:** Commissioner Natacha Seijas  
**Co-Sponsor:** Commissioner Jose "Pepe" Diaz  
**Co-Sponsor:** Commissioner Audrey M. Edmonson

**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:

- 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>

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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 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*.

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 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

Michael Amador-Gil, Senior Legislative Analyst

Bia Marsellos, Supervisor

Mia Marin, Legislative Analyst

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
- 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.

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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)

## 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.

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

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<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

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

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.

### **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.

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<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.



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).

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

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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.

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

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.

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

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<sup>14</sup> Ibid.

<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

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 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>

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<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/)

<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.

## 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.

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.

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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>

### 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.
- 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.*

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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.

**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.

- 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.