

MEMORANDUM

GOC
Agenda Item No. 1G1

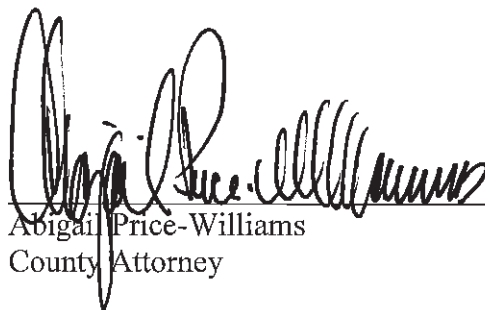
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: July 11, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to wage theft; amending sections 22-2, 22-4 and 22-5 of the Code; imposing a jurisdictional limit for complaints; clarifying that wage theft provisions do not create a private cause of action; enhancing penalties for repeat offenders, providing for dismissal procedures and appeals; providing that County contractors or vendors that do not satisfy a final order may be subject to debarment or be deemed ineligible to bid on or participate in County contracts; extending such ineligibility to certain officers, directors and shareholders of such contractors and vendors

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: June 20, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(6)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor'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
Veto _____
Override _____

Agenda Item No. 14(A)(6)
6-20-17

ORDINANCE NO. _____

ORDINANCE RELATING TO WAGE THEFT; AMENDING SECTIONS 22-2, 22-4 AND 22-5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; IMPOSING A JURISDICTIONAL LIMIT FOR COMPLAINTS; CLARIFYING THAT WAGE THEFT PROVISIONS DO NOT CREATE A PRIVATE CAUSE OF ACTION; ENHANCING PENALTIES FOR REPEAT OFFENDERS, PROVIDING FOR DISMISSAL PROCEDURES AND APPEALS; PROVIDING THAT COUNTY CONTRACTORS OR VENDORS THAT DO NOT SATISFY A FINAL ORDER MAY BE SUBJECT TO DEBARMENT OR BE DEEMED INELIGIBLE TO BID ON OR PARTICIPATE IN COUNTY CONTRACTS; EXTENDING SUCH INELIGIBILITY TO CERTAIN OFFICERS, DIRECTORS AND SHAREHOLDERS OF SUCH CONTRACTORS AND VENDORS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the administration of the wage theft provisions of Chapter 22 of the County Code over the last seven years has demonstrated that it is an effective process for vindicating instances of wage theft; and

WHEREAS, such experience has also demonstrated the need for jurisdictional limits for wage theft complaints, since Chapter 22 was intended to be a low-cost procedure for employees who could not afford filing fees for small claims court and not a procedure to vindicate claims of unpaid wages which could be redressed in circuit court and where there are substantial amounts of money in dispute; and

WHEREAS, the jurisdictional threshold for circuit court in Florida is \$15,000.00 and this provides a reasonable limit for complaints under Chapter 22 since complaints over \$15,000.00 are permitted in circuit courts in Florida; and

WHEREAS, it is important to enhance penalties for repeat offenders and to provide incentives for County contractors and vendors to comply with the County's wage theft provisions under Chapter 22; and

WHEREAS, the following amendments to Chapter 22 strengthen, streamline and enhance the effectiveness of the County's efforts to eradicate wage theft and as such these amendments are in the best interest of the public,

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

Section 1. Section 22-2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Section 22-2. – Definitions

* * *

(g) ~~at least~~ >>Jurisdictional<< [[F]]>>t<<hreshold amount shall mean >>at least<< sixty (\$60.00) dollars >>, and jurisdictional limit shall mean no more than fifteen thousand dollars (\$15,000.00),<<[[sixty (\$60.00)]] dollars >>in unpaid or underpaid wages alone not including any other amounts such as sanctions, penalties, liquidated damages, fees or costs<<.

* * *

Section 2. Section 22-4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Section 22-4. – Procedures for wage theft complaints

¹ 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.

(1) *Filing wage theft complaints.*

- (a) >>Jurisdictional<< [[T]]>>t<<hreshold amount >>and jurisdictional limit<<. In order for a complaint to be submitted to >>and not summarily dismissed by<< 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 >>jurisdictional<< threshold amount >>and no greater than the jurisdictional limit<<.
- (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 >>jurisdictional<<threshold amount >>and does not exceed the jurisdictional limit<< [[~~eriterion~~]]. >> Any wage theft complaint that is submitted that does not meet the requirements of section 22-4, including a failure to meet the jurisdictional threshold amount or exceeding the jurisdictional limit, shall be dismissed by appropriate County staff by providing written notice of such dismissal to the complainant. A complainant may appeal a dismissal to a Hearing Examiner by submitting a written notice of appeal of such dismissal to the County within 20 days of the date of the County's written dismissal. If timely requested, a Hearing Examiner shall be assigned who shall only consider written submissions to evaluate whether the dismissal was an abuse of discretion.<< [[~~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 >> that the complaint meets the requirements of section 22-4 and is not subject to dismissal, or if such dismissal is overturned by a Hearing Examiner. << 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.

* * *

(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 >> jurisdictional << threshold >> amount and does not exceed the jurisdictional limit << and >> meets the << other requirements >> of section 22-4 <<, 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.

* * *

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

(a) *Enforcement by private persons.*

- (i) >>This chapter does not, and was never intended to, create a private right of action for enforcement of this chapter in court. To the extent there may be available remedies under state or federal laws to complainants under this chapter that may provide relief under state or federal law in courts or other administrative proceedings, it is not in the public interest to also provide the administrative procedures and remedies available under this chapter. Accordingly, << [[F]]>>i<<f 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 >>under this chapter<<, 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.

Section 3. Section 22-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Section 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.

>>(c) If the respondent has previously been found to have engaged in wage theft in the last 5 years, then in addition to the other remedies available under this chapter, the Hearing Examiner may assess additional penalties against the respondent in the amount of 20

percent above the under payment found in the current proceeding, an additional amount of 40 percent above the underpayment amount if it is a third offense, and an additional 60 percent above the underpayment amount if it is a fourth offense. Revenue received from payment of these penalties for multiple offenses imposed hereunder shall be deposited in a separate account and shall be utilized to defray costs of administering the Wage Theft provisions of Chapter 22.<<

- (2) *Failure to Comply with Final 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.

>>(d) A County vendor or contractor which has not paid an amount due under a Final Order issued pursuant to this chapter, in whole or in part, and its officers, directors, principals, owners, and shareholders owning a controlling interest in the vendor or contractor, shall be presumed not to be responsible to receive a County contract award. Additionally, the failure of a County vendor or contractor to satisfy a Final Order issued pursuant to this chapter may be cause for debarment under section 10-38 of this Code.<<

Section 4. 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 5. 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 6. 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:

APW

Prepared by:

ER

Eric A. Rodriguez

Prime Sponsor: Commissioner Jose "Pepe" Diaz