

MEMORANDUM

Agenda Item No. 7(c)

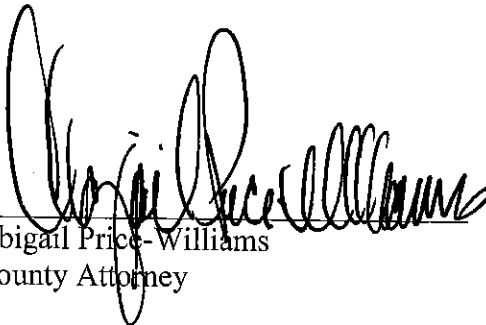
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: (Second Reading 6-5-18)
February 6, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to Emergency Management and Employment; creating section 8B-11.1 of the Code; making it unlawful for an employer to retaliate or threaten to retaliate against a non-essential employee who complies with County evacuation or emergency orders; providing exemptions for certain government employees and certain other essential employees; providing exceptions; establishing penalties; providing for applicability and enforcement; amending section 8CC


The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman and Co-Sponsors Commissioner Jose "Pepe" Diaz and Commissioner Barbara J. Jordan.


Abigail Price-Williams
County Attorney

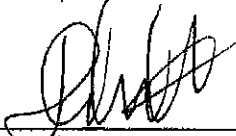
APW/lmp

Memorandum



Date: June 5, 2018
To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor 
Subject: Fiscal Impact Statement for Ordinance Relating to Emergency Management and
Employment

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as it will not result in additional staffing needs or future operational costs. Any enforcement relating to the implementation of the ordinance would be absorbed as part of ongoing monitoring.



Jack Osterholt
Deputy Mayor

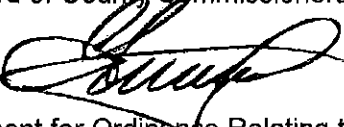
FIS04618 180148

Memorandum



Date: June 5, 2018

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


From: Carlos A. Gimenez 
Mayor

Subject: Social Equity Statement for Ordinance Relating to Non-Essential Employees
Complying with County Evacuation and Emergency Orders

The proposed ordinance relating to emergency management and employment creates Section 8B-11.1 of the Code of Miami-Dade County (Code) making it unlawful to retaliate against non-essential employees complying with County evacuation and emergency orders, including non-essential employees working in evacuation areas that depend on public transportation. The proposed ordinance establishes a criminal penalty and amends Section 8CC of the Code establishing a civil penalty.

The provisions of this ordinance may assist employees and businesses by acting as an incentive for emergency planning. When a business intends to remain operational during a declared state of emergency and evacuation order, employees will have the benefit of knowing whether they are classified as essential or non-essential employees and can plan accordingly. Additionally, the business will be better prepared during the period leading up to the state of local emergency to find willing and able employees who can perform essential functions. This may result in additional wages for employees and revenues for businesses that might otherwise need to close prematurely leading up to a state of emergency.

Alternatively, businesses that fail to plan appropriately could find themselves subject to investigation and potential civil or criminal penalties, should there be any retaliation against employees that fail to report to work as a result of an evacuation order.



Jack Osterholt
Deputy Mayor

180148



MEMORANDUM

(Revised)

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

DATE: June 5, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(C)

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. 7(C)
2-6-18

ORDINANCE NO. _____

ORDINANCE RELATING TO EMERGENCY MANAGEMENT AND EMPLOYMENT; CREATING SECTION 8B-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; MAKING IT UNLAWFUL FOR AN EMPLOYER TO RETALIATE OR THREATEN TO RETALIATE AGAINST A NON-ESSENTIAL EMPLOYEE WHO COMPLIES WITH COUNTY EVACUATION OR EMERGENCY ORDERS; PROVIDING EXEMPTIONS FOR CERTAIN GOVERNMENT EMPLOYEES AND CERTAIN OTHER ESSENTIAL EMPLOYEES; PROVIDING EXCEPTIONS; ESTABLISHING PENALTIES; PROVIDING FOR APPLICABILITY AND ENFORCEMENT; AMENDING SECTION 8CC; PROVIDING CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the County orders evacuations during a declared State of Emergency in order to safeguard human health; and

WHEREAS, during a declared State of Emergency, mass transit options are often reduced or eliminated; and

WHEREAS, individuals who comply with an evacuation order often find it difficult, if not impossible, to get to work; and

WHEREAS, individuals who comply with an evacuation order, and who are unable to get to work, should not be subject to sanctions from their employer,

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

Section 1. Section 8B-11.1 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

>>Sec. 8B-11.1. Unlawful Retaliation Against Employees During Emergency Disasters.

- (1) For purposes of this section,
 - a. “essential employee” shall mean any employee that is critical to the essential functioning of the following employers:
 - i) hospital or health care provider;
 - ii) public or private utility;
 - iii) media;
 - iv) government agency;
 - v) government contractor;
 - vi) public safety agency; and
 - vii) any other business that provides essential emergency related public safety supplies or services.
 - b. “unlawful retaliation” shall mean termination, demotion, or withholding or nonpayment of wages, salary, bonuses or benefits.
- (2) Upon a declaration of a state of emergency applicable to any portion of Miami-Dade County, it shall be unlawful for any employer to retaliate or threaten to retaliate against any employee who is not an essential employee and who complies with County evacuation orders or other County Executive Orders issued during a declared state of local emergency.

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.

6

- (3) To ensure that employees that rely on mass transit services are evacuated from vulnerable areas, for purposes of this section, any non-essential employee that depends on mass transit service to commute to work to an area that is subject to a County evacuation order shall comply with County evacuation orders prior to the suspension of transit services. No employer shall retaliate or threaten to retaliate against such an employee for complying with a County evacuation order.
- (4) This section shall not apply to any employer who has promulgated a written policy that
- a. defines essential and non-essential employees, and
 - b. requires that only essential personnel report to the place of employment during a declared state of local emergency.
- No policy shall be considered promulgated unless conveyed to all employees in writing at least 30 days prior to the declaration of local emergency and enforced by the employer.
- (5) In addition to any remedies elsewhere provided in the County Code or under law, any employer who violates any provision of this section may be punished by a fine not to exceed \$500, or by imprisonment for not more than 60 days, or both. An employer who violates this section shall be subject to a separate violation for each employee unlawfully retaliated or threatened to be retaliated against.
- (6) *Applicability and enforcement.* This section shall apply to both the incorporated and unincorporated areas, and in the unincorporated areas shall be enforced by the County and in the incorporated areas shall be enforced concurrently by the municipalities and the County.<<

Section 2. Section 8CC of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Chapter 8CC CODE ENFORCEMENT

* * *

Sec. 8CC-10. Schedule of civil penalties.

* * *

Code Section	Description of Violation	Civil Penalty
8AA-160(d)	Failure to maintain membership in Sunshine State One Call	\$100.00
	All other Chapter 8AA, Article I violations	\$500.00
>>8B-11.1	<u>Unlawful Retaliation for Compliance With County Emergency Management Evacuation and Executive Orders</u>	\$500.00<<
8B-16	Failure to file or abide by Gas Station Emergency Plan	\$500.00

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.

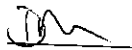
Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



David M. Murray

Prime Sponsor: Commissioner Sally A. Heyman
Co-Prime Sponsor: Commissioner Jose "Pepe" Diaz
Commissioner Barbara J. Jordan