

**BCC Meeting: June 5, 2018
Research Notes**

**Item No. 7C
File No. 180148**

Researcher: JFP Reviewer: TD

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

ISSUE/REQUESTED ACTION

Whether the Board should create Section 8B-11.1 and amend Chapter 8CC of the County 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.

APPLICABLE LEGISLATION/POLICY

Chapter 8CC of the Code of Miami-Dade County governs code enforcement.

[https://library.municode.com/fl/miami -
dade county/codes/code_of_ordinances?nodeId=PTIIICOOOR_CH8CCCOEN](https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOOR_CH8CCCOEN)

PROCEDURAL HISTORY

**Prime Sponsor: Commissioner Sally A. Heyman, District 4
Department/Requester: None**

At the May 9, 2018 Public Safety and Health Committee meeting, the proposed Ordinance's sponsor, Commissioner Heyman, explained that the reasoning behind the proposed Ordinance is to protect employees, many who rely on public transportation during an emergency when public transportation options are often minimal and getting to work proves difficult, from retaliation from employers for the employee not reporting to work.

Commissioner Martinez asked for clarification from the administration as to whether the proposed Ordinance would apply to the County. Deputy Mayor Kemp responded that his understanding was that the proposed Ordinance would not apply to the County. Sponsor Commissioner Heyman clarified that it applies to both the incorporated and unincorporated areas of Miami-Dade County, while government already has a policy in place to redirect people to *essential* categorization during a declared State of Emergency, otherwise they are sent home.

The proposed Ordinance was forwarded to the BCC with a favorable recommendation by the Public Safety and Health Committee.

FISCAL IMPACT

The implementation of the proposed ordinance will not have a fiscal impact on the County since it will not result in additional staffing needs or future operational costs.

ANALYSIS

The proposed Ordinance protects employees from employer-issued sanctions when complying with County-issued evacuation orders.

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During a declared State of Emergency, mass transit options are often minimal and many are left without means of transportation. For individuals who comply with an evacuation order, getting to work is often difficult or impossible. The proposed Ordinance states that individuals who comply with a County-issued evacuation order during a declared State of Emergency shall not be subject to sanctions from their employer. Unlawful sanctions by an employer could result in civil penalties in the amount of \$500 or by imprisonment for up to 60 days, or both.

There is no Florida law directly barring employers from issuing sanctions to staff for evacuating during emergencies, even if the evacuation was mandatory. However, private employees can seek relief through civil action under Florida's private sector Whistleblower Act. The Act provides that an employer cannot take any retaliatory action, such as termination, against an employee who refused to participate in any activity that is in violation of a law, rule, or regulation, Sections 448.101-448.105, F.S. To prevail, a court would need to find:

- The employer's request to attend work under a mandatory evacuation order was a violation of a law, rule, or regulation;
- The employee refused to violate such law, rule, or regulation; and
- The employer took retaliatory personnel action against the employee

However a nursing home employee who sought relief through a Florida Whistleblower Act civil action as a result of being terminated by her employer after following mandatory evacuation orders was unsuccessful in her attempt to establish that a mandatory evacuation order was a law, rule, or regulation, *see Gillyard v. Delta Health Group, Inc.*, 757 So.2d 601, (Fla. 5th DCA 2000).

At the state level, SB 1828, similar legislation that would prohibit an employer from taking retaliatory personnel action against an employee who has left a place of employment to evacuate under a mandatory evacuation order, was introduced during the 2018 State Legislative Session. The bill died in the first of three committee stops.

At the local level, OCA's search produced no other Florida counties or municipalities with similar ordinances to that which has been proposed.

Below are the proposed amendments, compared to the County Code as it currently reads:

Section 8B-11.1 of the Code of Miami-Dade County is created to read as follows:	
	<p>Sec. SB-11.1. Unlawful Retaliation Against Employees During Emergency Disasters.</p> <p>(1) For purposes of this section,</p> <p>a. "essential employee" shall mean any employee that is critical to the essential functioning of the following employers:</p> <ul style="list-style-type: none"> 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.

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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.

(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

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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.

Chapter 8CC of the Code of Miami-Dade County as it currently reads:

Proposed amendment to Chapter 8CC of the Code of Miami-Dade County:

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-16	Failure to file or abide by Gas Station Emergency Plan	\$500

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
<u>8B-11.1</u>	<u>Unlawful Retaliation for Compliance With County Emergency Management Evacuation Orders</u>	<u>\$500</u>
8B-16	Failure to file or abide by Gas Station Emergency Plan	\$500