OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: September 10, 2010

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

Agenda Item No. 9(A)(1)

From: George M. Burgess
County Manager

Resolution No. R-898-10

Subject: Creating Implementing Order 3-54 Relating to Miami-Dade County's Wage Theft Ordinance

---

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution creating Implementing Order (IO) 3-54 relating to the County's Wage Theft ordinance. The proposed IO provides uniform procedures for filing wage theft complaints by employees in Miami-Dade County, pursuant to Chapter 22 of the Code of Miami-Dade County.

Scope

This IO has a direct beneficial impact countywide as it creates procedures to address unfair economic competition by unscrupulous businesses that do not pay or underpay their employees. The IO has the added benefit of relieving the burden on the public to subsidize unscrupulous employers whose employees are forced to rely on public assistance because of unpaid or underpaid wages.

Fiscal Impact/Funding Source

To manage complaint intake, coordinate administrative hearings, enforcement and reporting functions for the anticipated volume of complaints, one additional position is necessary at a total cost of $75,000 per fiscal year. The cost for a hearing examiner is estimated at $3,500 per day, although every effort will be made to encourage employees and employers to reach conciliatory agreements in lieu of engaging a hearing examiner. In addition, a one-time database modification must be made at a cost of $2,800 to ensure appropriate complaint logging, tracking and reporting.

Track Record/Monitor

The Department of Small Business Development (SBD) will administer and monitor the Wage Theft Program. During the first year, quarterly reports will be provided to the Board summarizing wage theft complaints and associated actions.

Background

On February 18, 2010, the Board, through Ordinance 10-16, created Chapter 22 of the Code of Miami-Dade County, Florida, prohibiting wage theft and provided remedies for employees who are exploited by unscrupulous employers.

The proposed IO provides uniform procedures for filing wage theft complaints, including employee eligibility to file, and complaint criteria that must be met prior to the County accepting the complaint. In addition, the IO includes filing guidelines that clearly describe the information to be provided by employees in order to successfully file a complaint, and to assist the hearing examiner with making a determination.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: September 10, 2010

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

SUBJECT: Agenda Item No. 9(A)(1)

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
Veto _____
Override _____

Agenda Item No. 9(A)(1)
9-10-10

RESOLUTION NO. R-898-10

RESOLUTION APPROVING IMPLEMENTING ORDER 3-54 RELATING TO MIAMI-DADE COUNTY'S WAGE THEFT ORDINANCE TO PROVIDE UNIFORM PROCEDURES FOR FILING A WAGE THEFT COMPLAINT IN ACCORDANCE WITH CHAPTER 22 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approve Implementing Order 3-54 relating to Miami-Dade County's wage theft ordinance to provide uniform procedures for filing a wage theft complaint in accordance with Chapter 22 of the Code of Miami-Dade County, Florida.

The foregoing resolution was offered by Commissioner Natacha Seijas, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman aye
Jose "Pepe" Diaz, Vice-Chairman aye

Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Eric A. Rodriguez

I.O. No.: 3-54
Ordered:
Effective:

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

Wage Theft Program

AUTHORITY:
The Miami-Dade County Home Rule Amendment and Charter, including among others, Sections 1.01 and 2.02 A and Chapter 22 of the Code of Miami-Dade County.

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. This Implementing Order (IO) eliminates the underpayment or nonpayment of wages earned by persons working in Miami-County and serves the public purpose by promoting their economic security and dignity; 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 unfairly subsidizes unscrupulous Employers whose Employees are forced to rely on public assistance because of unpaid or underpaid wages.

SCOPE:
Any Employer who fails to pay any portion of wages due to an Employee, according to that Employee's wage rate, within a reasonable time from the date on which that Employee performed the work for which those wages were compensation, shall be considered 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.

DEFINITIONS:

1. *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.

2. *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:

   (a) The United States or a corporation wholly owned by the government of the United States;
   (b) The State of Florida;
   (c) Miami-Dade County;
   (d) The Public Health Trust of Miami-Dade County, or
   (e) An Indian Tribe.

5

3. *Hearing Examiner* – shall mean a person appointed by the County that it deems qualified to hear wage theft matters.

4. *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.

PROCEDURE:

A. Criteria to File Wage Theft Complaint

1. The Employee's work must have been performed within the geographic boundaries of Miami-Dade County;

2. The Employee's claim must be at least sixty-dollars ($60);

3. The Employee's complaint must be filed within one year of the date the work was performed.

Notwithstanding the above, in the event that either of the following conditions are present, the Employee may not file a wage theft complaint with the County:

1. The Employee has brought private legal action against the Employer, or is aware of either private action brought on their behalf, or any enforcement action brought by the State of Florida based upon the same facts and allegations against the Employer regarding this wage claim;

2. The Employee already has a judgment involving the same wage claim.

B. Filing Wage Theft Complaint

A standard wage theft complaint form (Form) shall be made available to aggrieved Employees by the County's Department of Small Business Development (SBD) during normal business hours. The Form may be amended by SBD as needed to best comply with Chapter 22 of the Code of Miami-Dade County. The Form must be filled out completely and legibly, and signed and dated prior to its acceptance by SBD. Below are filing guidelines for Employees to follow:

1. Employees must provide their name, address, and telephone number. If the Employee does not have a telephone, an alternate contact number should be provided (e.g. friend or relative). If the Employee's address or telephone number changes after filing the Form, the Employee must notify the County of the change. The complaint may be closed if the County is unable to contact the Employee.

2. Employees must provide the Employer's name, name of the business, business address and telephone number. If filing a complaint against more than one Employer, a separate Form must be completed for each Employer. Each Employee filing against an Employer must complete a separate Form.

3. Employees must provide an explanation of the circumstances of the violation, including the following:

    - The date or dates (month/day/year format) the violation occurred; and
    - The dollar amount of unpaid wages, including how the Employee calculated this amount. For example:
        - Hours worked each day (or part of day) multiplied by the Employee's hourly or daily Wage Rate; or
        - For piece work, the number of pieces completed multiplied by the Wage Rate per piece.

4. Employees are encouraged to provide any supporting documentation that may assist the Hearing Examiner in evaluating their complaint. Examples of useful supporting documentation include:

    - A copy of any demand letter the Employee may have sent to the Employer for payment of unpaid wages;
    - A copy of Employee's paycheck(s) (front and back), and check stubs or payroll vouchers;
    - A copy of any agreements that were entered into and signed by the Employee and the Employer;
    - A written, notarized statement, with name and address, from fellow employee(s) who could substantiate the complaint;
    - A copy of Employee's work schedules, time sheets, or any other documentation verifying the number of hours/days worked or pieces completed;
    - If the claim involves a verbal agreement, the Employee should provide a thorough written statement detailing the terms of the agreement;
    - A copy of the Employee's W-2 form from the Employer;
    - Any records maintained by the Employee of hours/days worked or pieces completed and wages paid.

C. Criteria Determination

Once a complaint form has been accepted as complete, SBD will promptly determine whether the Employee's wage theft complaint meets the filing criteria in Section B above. This determination is a ministerial act and is not based on further investigation or the exercise of independent judgment. Once it is determined that the complaint meets the criteria, SBD will serve the complaint and provide written notice to the identified employer by certified mail within fifteen (15) days.

D. Employer Response

The Employer must respond to the Employee's complaint within twenty (20) days of its receipt.

E. Conciliation

SBD will encourage the Employee and Employer to reach a conciliatory agreement resolving the complaint prior to referring the matter to a Hearing Examiner.

F. Hearing Examiner

In the event that conciliation efforts are unsuccessful, the County will appoint a Hearing Examiner to determine whether a wage theft violation has occurred. Either the Employee or Employer may request that the Hearing Examiner issue subpoenas to summon witnesses to testify on their behalf. The party requesting a summons be issued is responsible for paying witnesses and their mileage fees. The Hearing Examiner's final determination may be appealed to the appropriate court of law in accordance with the Florida Rules of Appellate Procedure.

If the Hearing Examiner determines that a wage theft violation has occurred, the Hearing Examiner will order the Employer to pay wage restitution to the affected Employee in an amount equal to three (3) times back wages. The Employer must also pay the Board of County Commissioners for the actual administrative and processing costs of the hearing.

G. Representation

Employees and Employers may be represented by legal counsel or non-lawyer advocates before the Hearing Examiner or during any other proceedings related to this Implementing Order (IO).

H. Enforcement

If the Employer fails to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County will offer the Employer a one-time forty-five (45) days extension upon request and the Employer will be liable for payment of interest on the outstanding amounts owed to the Employee and the Board of County Commissioners.

I. Reporting

A fiscal report regarding the administrative cost associated with the implementation of the Wage Theft Program must be submitted to the Board of County Commissioners within six (6) months of the effective date of the ordinance creating Chapter 22 of the Code and annually thereafter.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Manager

Approved by the County Attorney as
to form and legal sufficiency ____