

Implementing Order



Implementing Order No.: 3-54

Title: Wage Theft Program

Ordered: 09/10/2010

Effective: 09/20/2010

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.

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.

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