

MIAMI-DADE COUNTY PROHIBITS “WAGE THEFT”

Insights

Feb 26, 2010

The Miami-Dade County Board of Commissioners recently approved an ordinance prohibiting “Wage Theft” in the county. The new ordinance will become effective on February 28, 2010.

The purposes of the ordinance include: eliminating the underpayment or nonpayment of wages; eliminating unfair economic competition by “unscrupulous businesses,” and relieving the public burden of subsidizing employees of “unscrupulous businesses.” The new law may require many employers to either change the manner in which they handle their payroll procedures, or to enter into written agreements with their employees setting out their procedures for payment of wages.

Who Is Covered?

The Wage Theft Ordinance applies to all private employers with employees who are performing work within the geographical boundaries of Miami-Dade County, without any regard to the physical location of the employer. That means that employers outside the county, whose employees perform any portion of their work in the county, appear to be covered by the ordinance. Also, as with state and federal wage and hour laws, *individuals* may be liable under the ordinance if they were capable of exercising supervisory authority over the complaining employee and were responsible to some degree for the alleged violation.

What Constitutes A Violation?

An employer is in violation of the Wage Theft Ordinance if it fails to pay a portion of wages due to an employee, according to the wage rate applicable to that employee, within a “reasonable time” from the date on which the work was performed by the employee. The ordinance presumes that a “reasonable time” is not later than 14 days. Employers may lengthen the period of time between the date work is

performed and the date the employee is paid wages, for a period not to exceed 30 days, upon express written agreement signed by the employee. While the ordinance defines wages to include any form of monetary compensation, it specifically mentions daily, hourly, or piece-rate pay. Thus, it is unclear whether the ordinance also applies to salaried employees.

How Will The Law Be Enforced?

Miami-Dade County's Department of Small Business Development will be responsible for implementation and administration of the Wage Theft Ordinance. The ordinance sets forth a streamlined hearing examiner process to address alleged violations, making it easier for employees to take action against employers.

To begin the process, an aggrieved employee must file a complaint with the county alleging a violation of the ordinance, involving unpaid wages of at least \$60. The county will then serve the complaint on the employer, which will have 20 days to file an answer. Thereafter, upon motion of either party, discovery shall be permitted.

Finally, upon request by either party, a hearing will be held before a Hearing Examiner, who will determine if the preponderance of the evidence demonstrates a violation of the ordinance. Where an employer has imprecise, inadequate or nonexistent time and payroll records and the employee presents sufficient evidence of hours worked or compensation owed, the burden of disproving the employee falls on the employer.

If the Hearing Examiner finds a violation, the employer will be ordered to pay wage restitution to the affected employee in an amount equal to *three times* the amount of back wages that the employer is found to have unlawfully failed to pay the employee, as well as to pay the Board of County Commissioners an assessment of costs not to exceed actual administrative processing costs and costs of hearing (estimated at approximately \$3,500). Unlike state or federal wage and hour laws, the ordinance does not provide for attorneys' fees to a prevailing employee. The ordinance also includes a provision for the conciliation of disputes prior to a complaint being referred to a Hearing Officer.

An employee may file a complaint for wage theft with the county no later than one year after the last date upon which the employee performed the work. In the case of ongoing violations, once a timely complaint is made, the county's enforcement ability is limited only by the applicable statute of limitations. Although class actions are not expressly referred to in the ordinance, the Hearing Examiner has the authority to consolidate two or more complaints into a single hearing where such complaints name the same employer and involve sufficiently similar allegations of fact to justify consolidation.

What You Need To Do?

It goes without saying that employers must ensure that employees are paid at least the applicable minimum wage and overtime premiums to all employees, unless they are exempt from those requirements under state or federal law. In addition, employers with a payday more than 14 days after the first day of the pay period, such as those with a biweekly pay period and a payday several days after the close of the pay period, will need to either 1) alter their pay practices to comply with the ordinance or 2) ensure that their employees sign a written agreement which expressly states that the employee agrees to be paid on some other date not more than 30 days after the work was performed.

This Legal Alert provides an overview of a specific ordinance. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.