

PROPOSED

ORDINANCE NO. 2012-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, CREATING CHAPTER 20½ OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO PROHIBIT WAGE THEFT; PROVIDING FOR AN ADMINISTRATIVE COMPLAINT, ADMINISTRATIVE HEARING AND ADMINISTRATIVE PROCEDURES FOR WAGE THEFT CLAIMS; PROVIDING FOR ENFORCEMENT OF ADMINISTRATIVE ORDERS IN A COURT OF COMPETENT JURISDICTION; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Vice-Mayor Kristin Jacobs)

WHEREAS, the Board of County Commissioners finds that the underpayment or nonpayment of wages earned by persons working in the County harms the public health, safety, and welfare,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Chapter 20½ of the Broward County Code of Ordinances is hereby created to read as follows:

[UNDERLINING OMITTED]

Chapter 20½. Wage Theft.

Sec. 20½-1. Declaration of Policy.

It is hereby declared to be the policy of Broward County in the exercise of its police power for the public safety, health, and general welfare, to prevent wage theft. Eliminating the underpayment or nonpayment of wages earned by persons working in the County serves the public by promoting economic security and dignity for those working in the County; by promoting business and economic development through the

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1 elimination of unfair economic competition by unscrupulous businesses that do not pay
2 or that underpay their employees; and by relieving the burden on the public to subsidize
3 unscrupulous employers whose employees are forced to rely on public assistance
4 because of unpaid or underpaid wages.

5 **Sec. 20¹/₂-2. Definitions.** For purposes of this chapter:

6 (a) *Employ.* The meaning of "employ," including as used in the terms
7 employing or employment, shall include to suffer or permit to work.

8 (b) *Employee* shall mean a natural person who performs work within the
9 geographic boundaries of Broward County while being employed by an employer, but
10 shall not include any bona fide independent contractor.

11 (c) *Employer* means any natural person or entity employing an employee,
12 except such term does not include:

13 (1) The United States or a corporation wholly owned by the government of the
14 United States;

15 (2) The State of Florida;

16 (3) Broward County; or

17 (4) Any Indian Tribe.

18 (d) *Independent contractor* shall have the same meaning as in the Internal
19 Revenue Code and implementing federal regulations.

20 (e) *Liquidated damages* shall mean twice the amount a respondent employer
21 is found to have unlawfully failed to pay the complainant employee. Where an
22 employee is awarded treble damages for wage theft violations, the treble damages are
23 comprised of such liquidated damages awarded in addition to back wages in order to
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1 compensate for the economic losses suffered by reason of the employee not receiving
2 his or her wage at the time it was due.

3 (f) *Reasonable time* shall be presumed to be no later than fourteen (14)
4 calendar days from the date on which the work is performed unless the employer has
5 established, by policy or practice, a pay schedule whereby employees earn and are
6 consistently paid wages according to regularly recurring pay periods, in which case
7 such pay schedule shall govern.

8 (g) *Threshold amount* shall mean sixty dollars (\$60.00).

9 (h) *Wage rate* shall mean any form of monetary compensation which the
10 employee agreed to accept in exchange for performing work for the employer, whether
11 daily, hourly, or by the piece, but in all cases shall be equal to no less than the highest
12 applicable rate established by operation of any federal, state, or local law.

13 **Sec. 20½-3. Wage Theft Violations.** A wage theft violation occurs when an
14 employer fails to pay any portion of wages due to an employee, according to the wage
15 rate applicable to that employee, within a reasonable time from the date on which that
16 employee performed the work for which those wages were compensation. Such
17 violation shall entitle an employee, upon a finding by a Hearing Officer appointed by
18 Broward County that an employer has unlawfully failed to pay wages, to receive back
19 wages in addition to liquidated damages from that employer.

20 **Sec. 20½-4. Procedures for Wage Theft Claims.**

21 (a) *Filing wage theft complaints.*

22 (1) Complaints alleging wage theft may be considered under this chapter only
23 if the employee alleges a wage theft violation equal to or exceeding the
24 the threshold amount.

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- 1 (2) Either of the following may file a written, signed complaint with the County
2 pursuant to the procedures established by the County Administrator
3 pursuant to Administrative Rule:
- 4 a. An employee aggrieved by a wage theft action prohibited by this
5 article; or
- 6 b. Any entity a member of which is an employee aggrieved by a
7 violation of this article.
- 8 (3) A signed complaint for wage theft must be filed with the County in the
9 manner prescribed by Administrative Rule no later than one (1) year after
10 the last date upon which the complainant employee performed the work
11 for a respondent employer with regard to which the employee alleges a
12 violation of this article has occurred ("filing deadline"). If the alleged wage
13 theft violation is ongoing at the time of the filing of the complaint, the
14 complaint may also seek recovery of amounts that accrue after the filing of
15 the complaint.
- 16 (4) The complaint shall set forth the facts upon which it is based with sufficient
17 specificity to identify the respondent employer(s) and for the County to
18 determine both that an allegation of wage theft has been made and that
19 the threshold amount has been met.
- 20 (b) *Respondent.*
- 21 (1) Upon the filing of any complaint, the County shall promptly determine
22 whether the complaint alleges wage theft, names at least one (1)
23 respondent employer, and meets the threshold amount. The duty of the
24 County in determining whether a complaint meets those criteria is limited

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1 to receiving the complaint and comparing the information provided therein
2 to the criteria required herein. This determination is a ministerial act and
3 may not be based on further investigation or the exercise of independent
4 judgment.

5 (2) Upon making such determination, the County shall serve the complaint
6 and a written notice on each respondent charged with the commission of
7 wage theft, setting forth the allegations, rights, and obligations of the
8 parties including, but not limited to, the right to a due process hearing on
9 the matter before a Hearing Officer and that the respondent may be
10 responsible for the costs of the Hearing Examiner and other enforcement
11 costs. Such service shall be by certified mail.

12 (3) Each respondent shall file an answer to the complaint with the County not
13 later than twenty (20) days after receipt of the complaint and the written
14 notice referenced above.

15 (c) *Hearing before Hearing Officer.*

16 (1) Within thirty (30) days after the service of the Complaint on the
17 respondent, or within ten (10) days after the County determines that any
18 conciliation efforts (as referenced below) will not result in resolution of the
19 dispute, whichever is later, the County shall appoint a Hearing Officer that
20 it deems to be qualified to hear wage theft matters. In conducting any
21 hearing to determine whether a violation of this chapter has occurred, the
22 Hearing Officer shall have the authority to administer oaths, issue
23 subpoenas, compel the production of evidence, and receive evidence.
24 The Hearing Officer shall have the authority to consolidate two (2) or more

1 complaints into a single hearing where such complaints name the same
2 respondent(s) and involve sufficiently similar allegations of fact to justify
3 consolidation. The final determination of the Hearing Officer in wage theft
4 matters is subject to appeal in a court of competent jurisdiction.

5 (2) All parties shall appear at the hearing in person, with or without counsel,
6 and may submit evidence, cross-examine witnesses, obtain issuance of
7 subpoenas, and otherwise be heard. Testimony taken at the hearing shall
8 be under oath and a transcript shall be made available at cost to any
9 interested party.

10 (3) Discovery shall be permitted upon motion of any party and shall proceed
11 in the manner provided by the Florida Rules of Civil Procedure.

12 (4) The Hearing Officer may direct that the parties submit a pre-hearing
13 statement addressing the issues of law and fact that will be involved in
14 such hearing, identify the witnesses that will testify, and provide a list of all
15 documents or other types of exhibits that will be submitted.

16 (5) Upon the conclusion of the hearing, an adjudicative final order shall be
17 issued and served upon the parties setting forth written findings of fact and
18 conclusions of law.

19 (6) Subject to paragraph (7) immediately below, in any proceeding under this
20 chapter, the burden of proof by a preponderance of the evidence rests
21 upon the complainant.

22 (7) When the following three (3) conditions are met:
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- 1 a. By operation of some other statute or regulation, a respondent
2 employer has an obligation to keep records of an employee's hours
3 worked and/or records of compensation provided to an employee;
4 b. Such records are imprecise, inadequate, or do not exist; and
5 c. A complainant employee presents sufficient evidence to show, as a
6 matter of just and reasonable inference, the amount of work done
7 or the extent of work done or what compensation is due for the
8 work done;

9 then the burden of imprecision falls on the respondent whose obligation it
10 was to keep accurate records, and the respondent must come forward
11 with evidence of the precise amount of work performed or with evidence to
12 negate the reasonableness of the inference to be drawn from the
13 complainant's evidence. If the respondent fails to meet this burden, the
14 Hearing Officer may award approximate damages based on the
15 complainant's evidence.

16 (d) *Subpoenas.*

17 (1) Any party may request that a subpoena be issued by the Hearing Officer.
18 Witnesses summoned by subpoena shall be entitled to the same witness
19 and mileage fees as are witnesses in proceedings in the County Court of
20 Broward County, Florida. Fees payable to a witness summoned by
21 subpoena issued at the request of a party shall be paid by that party.

22 (2) Within ten (10) days after service of a subpoena upon any person, such
23 person may petition the Hearing Officer to revoke or modify the subpoena.
24 The Hearing Officer shall grant the petition if he or she finds that the

1 subpoena requires appearance or attendance at an unreasonable time or
2 place, that it requires production of evidence which does not relate to the
3 matter, that it does not describe with sufficient particularity the evidence to
4 be produced, that compliance would be unduly onerous, or for other good
5 reason.

6 (3) In the case of refusal to obey a subpoena, the Hearing Officer or any party
7 may seek enforcement of a subpoena issued under the authority of this
8 chapter by filing a petition for enforcement in a court of competent
9 jurisdiction. In such enforcement proceeding, the court may award to the
10 prevailing party all or part of the costs and attorney's fees incurred in
11 obtaining the enforcement order as authorized by the Florida Rules of Civil
12 Procedures.

13 (4) Any person who willfully fails or neglects to attend and testify or to answer
14 any lawful inquiry or to produce records, documents, or other evidence, if
15 in his or her power to do so, may be fined by a court of competent
16 jurisdiction, not more than five hundred dollars (\$500.00) or imprisoned
17 not more than sixty (60) days or both.

18 (5) Any person who makes or causes to be made any false entry or false
19 statement of fact in any report, account, record, or other document
20 submitted to the Hearing Officer pursuant to its subpoena or other order,
21 or who willfully mutilates, alters, or by any other means falsifies any
22 documentary evidence, may be fined by in a court of competent
23 jurisdiction, not more than five hundred dollars (\$500.00) or imprisoned
24 not more than sixty (60) days or both.

1 (e) *Applicability of Florida Rules of Civil Procedure.*

2 (1) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall
3 govern the computation of any period of time prescribed or allowed by this
4 chapter or by rules, regulations, or orders adopted pursuant to this
5 chapter.

6 (2) All papers or pleadings required by this chapter to be served may be
7 served by certified mail or in accordance with Rule 1.080, Florida Rules of
8 Civil Procedure.

9 (f) *Conciliation.*

10 (1) It is the policy of the County to encourage conciliation of charges. The
11 County will work with the parties in an attempt to conciliate. If possible, a
12 written conciliation agreement resolving the dispute between the
13 complainant and the respondent shall be executed prior to the referral of
14 the matter to a Hearing Officer.

15 (2) Any conciliation agreement shall be between the respondent and the
16 complainant.

17 (3) Whenever a party believes that the other party has breached a conciliation
18 agreement, the aggrieved party may file a civil action in a court of
19 competent jurisdiction for enforcement of such agreement.

20 (4) Nothing said or done in the course of attempting conciliation under this
21 chapter may be used as evidence in any subsequent proceeding under
22 this chapter or otherwise without the written consent of the parties to the
23 underlying charge of violation.
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1 (g) *Representation by Non-lawyer Advocate.* Any person may be represented
2 by counsel in any proceeding under this chapter. Any party, including corporate
3 entities, as an alternative to counsel, may be represented by a non-lawyer advocate
4 authorized by that party, except where such representation is prohibited by law or
5 disallowed by the Hearing Officer for good cause.

6 (h) *Enforcement by private persons or by the State of Florida.*

7 (1) *Enforcement by private persons.* If during the pendency of a wage theft
8 violation complaint but prior to the issuance of a final decision by a
9 Hearing Officer, a complainant employee brings a private action in his or
10 her own right, whether under state law, federal law, or both, in any state or
11 federal court to seek unpaid wages based upon the same facts and
12 allegations as the complainant employee's complaint to the County, or
13 affirmatively or by consent opts to participate in any such litigation, that
14 complainant employee's complaint of wage theft shall be deemed
15 withdrawn with respect to any respondent employer named as a
16 defendant in such court action. This section shall be interpreted narrowly
17 so as to leave unaffected any cumulative rights which were not the subject
18 of a complaint employee's complaint.

19 (2) *Enforcement by the State of Florida.* If at any time during the pendency of
20 a complaint of wage theft, the Hearing Officer becomes aware of an
21 enforcement action by the Florida Attorney General or other body of the
22 State of Florida based on wage violations involving the same facts as the
23 complainant employee's complaint to the County, the Hearing Officer shall
24 dismiss, without prejudice, the complainant employee's complaint with

1 respect to the respondent or respondents named in such State
2 enforcement action.

3 **Sec. 20¹/₂-5. Enforcement of Wage Theft Violations.**

4 (a) *Order Issued.* At the conclusion of a hearing, the Hearing Officer shall
5 issue a final written order stating whether the wage theft violation has been established
6 by a preponderance of the evidence. If such violation has been so established, the final
7 written order shall:

- 8 (1) Require the employer to pay wage restitution to the affected employee in
9 an amount equal to three (3) times the amount of back wages that the
10 respondent employer is found to have unlawfully failed to pay the
11 complainant employee; this treble damage amount shall include the back
12 wages in addition to liquidated damages as compensation for the
13 economic losses suffered by reason of the employee not receiving his or
14 her wage at the time it was due;
- 15 (2) Require the employer to reimburse the employee for any reasonable costs
16 and attorney's fees incurred by the employee in connection with the
17 administrative hearing; and
- 18 (3) Require the employer to pay to the Board of County Commissioners an
19 assessment of costs in an amount not to exceed actual administrative
20 processing costs and the cost of the hearing.

21 (b) *Failure to Comply with Order.* If any respondent employer fails to comply
22 with the Hearing Officer's final written order within thirty (30) days after issuance of the
23 order, interest shall accrue on all amounts due and owing the employee and the County
24 with interest commencing as of the date of the order. Such interest shall accrue at the

1 applicable rate for court judgments in Florida. Additionally, the employee may file an
2 appropriate action in a court of competent jurisdiction to enforce compliance with the
3 order. If the employee files and prevails in such action, the employee shall be entitled
4 to recover its reasonable court costs and attorney's fees from the employer.

5 (c) *Cumulative Rights Preserved.* Nothing in this chapter shall be construed
6 to limit, preclude, or in any way abrogate the cumulative rights or remedies available to
7 employees at common law or by statute including, but not limited to, rights related to the
8 violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.

9 **Sec. 20½-6. Penalty for Filing a Frivolous Complaint.** If a Hearing Officer
10 determines that any wage theft complaint submitted to the County was without any
11 basis in law or fact, the Hearing Officer shall issue an order requiring the complainant,
12 or the entity filing the complaint on behalf of its member, where applicable, to reimburse,
13 within thirty (30) days of the order: (1) the County for all administrative costs incurred
14 by the County in connection with such complaint; and (2) each respondent employer
15 named in the complaint for all reasonable costs and attorney's fees incurred by the
16 employer in connection with the complaint. If such reimbursement is not timely made,
17 the County or the employer may file an appropriate action in a court of competent
18 jurisdiction to obtain such reimbursement.

19 Section 2. SEVERABILITY.

20 If any portion of this Ordinance is determined by any Court to be invalid, the
21 invalid portion shall be stricken, and such striking shall not affect the validity of the
22 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
23 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
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1 or circumstance(s), such determination shall not affect the applicability hereof to any
2 other individual, group, entity, property, or circumstance.

3 Section 3. INCLUSION IN CODE.

4 It is the intention of the Board of County Commissioners that the provisions of
5 this Ordinance shall become and be made a part of the Broward County Code; and that
6 the sections of this Ordinance may be renumbered or relettered and the word
7 "ordinance" may be changed to "section," "article," or such other appropriate word or
8 phrase in order to accomplish such intentions.

9 Section 4. EFFECTIVE DATE.

10 This Ordinance shall become effective as provided by law.

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12 ENACTED

13 FILED WITH THE DEPARTMENT OF STATE

14 EFFECTIVE

PROPOSED

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24 AJM/mm
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