

Ordinance 2015-21

An Ordinance of Osceola County Board of County Commissioners, Creating Chapter 25 “Wage Recovery”; to Address the Non-Payment and Underpayment of Earned Wages by Creating an Administrative Procedure to Receive and Process Complaints, Attempt Conciliation and Informal Resolution; Providing for a Hearing Officer to Hear Disputes and Render Decisions; Providing Remedies for Violations; Providing for Severability; Providing for Sunset Review; Providing for Conflict; Providing for Inclusion into the Osceola County Code of Ordinances; Providing for an Effective Date.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. Chapter 25 “Wage Recovery” is hereby adopted as follows:

CHAPTER 25 WAGE RECOVERY

Sec. 25-1. Findings and Declaration of policy.

- (a) Wage theft, which is the non-payment or underpayment of earned wages, is a significant problem in the County.
- (b) Eliminating wage theft serves important public purposes by promoting economic security and dignity for those working in the county; 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 subsidize unscrupulous employers whose employees are forced to rely on public assistance because of unpaid or underpaid wages.
- (c) The County has the authority under its Charter and as an exercise of its police power for the public safety, health and general welfare to address wage theft.

Sec. 25-2. Definitions.

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

- (b) *Employer* shall include any person who, 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, or any third-party labor provider, but does not include The United States or The State of Florida.
- (c) *Independent contractor* shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.
- (d) *Wages* shall mean any form of monetary compensation that an employee earns through employment, whether daily, hourly, or by piece, including tips, bonuses, and applicable overtime pay, whether exempt or non-exempt under the Fair Labor Standards Act, state, or local laws. In no case shall the wage rate be less than the highest applicable rate established by operation of any federal, state or local law.
- (e) *Reasonable time* shall be presumed to be no later than fourteen (14) calendar days from the date on which the work is performed unless the employer has established, by policy or practice, a pay schedule whereby employees earn and are consistently paid wages according to regularly recurring pay periods in which case such pay schedule shall govern.
- (f) *Threshold amount* shall mean sixty dollars (\$60.00).

Sec. 25-3. Wage theft violations.

For any employer to fail to pay any 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 that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by Osceola 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.

Sec. 25-4. Procedures for wage theft complaints.

- (a) Complaint
 - (1) Threshold amount. In order for a complaint to be submitted to the County by, or on behalf of, an aggrieved employee, that employee must allege a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.
 - (2) An aggrieved employee, or their representative, must file a written, signed complaint with the County no later than one (1) year from the date wages were due to be paid for work performed for a respondent employer with regard to which the employee alleges a violation of this chapter has occurred. This limitation period may be tolled while the employee is unaware of the violation, so

long as the employee could not reasonably have discovered the violation. If the alleged non-payment of earned wages violation is ongoing at the time of the filing of the complaint, the complainant may also seek recovery of amount that accrue after the filing of the complaint.

- (3) A complaint must set forth facts sufficient to identify at least one respondent and to demonstrate an allegation of wage theft within the time for filing a complaint and that the threshold amount has been met.
- (b) Response to Complaint
- (1) Upon the filing of any complaint, the County shall promptly determine that the complaint identifies at least one respondent, meets the threshold amount criterion, and alleges wage theft within the time for filing a complaint.
 - (2) If the complaint is deficient, the County shall provide the employee notice of the deficiency and an opportunity to amend the complaint. If amended within twenty (20) days, the amended complaint shall relate back to the original filing date.
 - (3) If the complaint is sufficient, a written explanation of the respondent's rights and liabilities under this ordinance include the right to a hearing, and a copy of this ordinance.
 - (4) Each respondent shall file an answer to the complaint with the County not later than twenty (20) days after receipt of the complaint and notice from the Director.
- (c) Conciliation.
- (1) It is the policy of the County to encourage informal resolution of charges. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to the referral of the matter to a hearing officer.
 - (2) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of violation.
 - (3) A conciliation agreement is enforceable by filing a civil action in a court of competent jurisdiction. In such an action, a prevailing employee shall be entitled to reasonable attorney's fees and costs.

Sec. 25-5. Conduct of Hearing.

- (a) Appointment of Hearing Officer.
- Within thirty (30) days after the service of the complaint on the respondent, or within ten (10) days after the County determines that any conciliation efforts have been exhausted, whichever is later, the County shall appoint a hearing officer that it deems to be qualified to hear wage theft matters. The hearing officer shall have the authority to administer oaths, issue subpoenas, compel the production of and receive evidence. Two or more

complaints may be consolidated into a single hearing if such complaint relate to the same respondent(s) and involve sufficiently similar allegations of fact to justify consolidation in the hearing officer's discretion.

(b) Subpoenas.

- (1) Any party may request that a subpoena be issued by the hearing officer. Witnesses summoned by subpoena of the hearing officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Osceola County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party.
- (2) Within ten (10) days after service of a subpoena upon any person, such person may petition the hearing officer to revoke or modify the subpoena. The hearing officer shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to the matter, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (3) In the case of refusal to obey a subpoena, the hearing officer or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Osceola County, Florida.
- (4) In any proceedings to enforce a subpoena authorized by this chapter, the court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures.

(c) Hearing.

- (1) All parties shall appear at the hearing, and may submit evidence, cross-examine witnesses, and otherwise be heard. The hearing officer may allow persons to appear by telephone or video conference. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party. The County may, at its discretion, utilize a court reporter or electronic recording device to create a verbatim record.
- (2) Upon motion, the hearing officer may permit discovery in any manner provided by the Florida Rules of Civil Procedure.
- (3) The hearing officer may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.
- (4) The hearing officer may rule on a motion to dismiss the complaint for failure to state a cause of action under this chapter.
- (5) The burden of proof by a preponderance of the evidence rests upon the employee.

- (d) **Presumption Based on Employer's Duty to Keep Records.** Employees must keep employment records, including hours worked, rates of pay, and compensation paid. Where a complainant employee presents sufficient evidence to raise a reasonable inference regarding the hours or amount of work performed, rate of pay, or compensation due, then the evidentiary burden shifts to the respondent employer.
- (e) **Representation.** Any person may be represented by counsel in any proceeding herein at that person's expense. Any party, including corporate entities, as an alternative to counsel, may be represented by a non-lawyer advocate authorized by that party in any proceeding herein at that party's expense, unless specifically disallowed by the hearing officer for good cause.
- (f) **Applicability of Florida Rules of Civil Procedure.** All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure. The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.

Sec. 25-6. Enforcement of wage theft violations.

- (a) **Hearing Officer's Decision.**
 - (1) The hearing officer shall issue a written decision setting forth findings of fact and conclusions of law. The decision shall be served on the parties. The hearing officer's decision shall be considered a final administrative ruling, enforceable in a court of competent jurisdiction and reviewable as a quasi-judicial action.
 - (2) If the preponderance of the evidence demonstrates a wage theft violation, the hearing officer shall order the employer to pay wage restitution to the affected employee in an amount equal to three times the amount of back wages that the respondent employer is found to have unlawfully failed to pay the complainant employee, and may order the employer to pay the employee's reasonable attorney's fees and any costs of this. The treble damages are intended to compensate the employee for economic damages and other injury. The hearing officer shall also order the employer to pay restitution to the Board of County Commissioners for its administrative costs.
- (b) **Failure to comply with Initial Order.** If the County finds that any respondent employer has failed to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County shall issue a further written order on the respondent employer as follows:
 - (1) The County may, upon request of the respondent, grant the respondent an additional forty-five (45) days to comply with any portion of the order, unless such an extension has previously been granted; and

- (2) The County shall order the respondent, in addition to wage restitution ordered, to pay the complainant employee an amount equal to the statutory interest rate for judgments in Florida civil court on the full amount of treble damages from the date upon which the finding of wage violation was made until the date upon which the amount is paid in full; and
 - (3) The County shall order the respondent,, in addition to assessment of costs ordered, to pay to the Board of County Commissioners an amount equal to the statutory interest rate which accrues on the assessment of costs from the date upon which the hearing officer's order is issued until the date upon which the amount is paid in full.
- (c) Joint and Severable Liability. In any order issued by the hearing officer, two or more respondents may be found jointly and severally liable for any amount payable to the complainant or the County or both; however, the total amount the complainant or the County may receive from jointly and severally liable respondents shall not exceed the total amount for which respondents are jointly and severally liable.

Sec. 25-7. Other Enforcement Efforts.

- (a) Enforcement by private persons.
 - (1) If during the pendency of a wage theft violation complaint but prior to the issuance of a final decision by a hearing officer, a complainant employee brings a private action in their own right, whether under state law, federal law, or both, in any state or federal court to seek unpaid wages based upon the same facts and allegations as the complainant employee's complaint to the County, or affirmatively or by consent opts to participate in any such litigation, that complainant employee's complaint of wage theft shall be deemed withdrawn with respect to any respondent employer named as a defendant in such court action. This section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of a complaint employee's complaint.
 - (2) The County, upon becoming aware of any private action described herein shall advise the complainant and any respondent subject to the private action in writing within fifteen (15) days of this provision and its effect on the complaint. Within thirty (30) days of the issuance of such notice, the County will dismiss, with prejudice, the complainant's complaint only with respect to the respondent or respondents who are named as a defendant to the private action.
- (b) Enforcement by the State of Florida. If at any time during the pendency of a complaint of wage theft, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage violations involving the same facts as the complainant employee's complaint to the County, the County will

dismiss, either with or without prejudice, the complainant employee's complaint with respect to the respondent or respondents named in such State enforcement action. The County shall advise the complainant and any respondent of such dismissal.

- (c) Cumulative Rights Preserved. Nothing in this article shall be construed to limit, preclude, or in any way abrogate the cumulative rights or remedies available to a complainant employee at common law or by other statute which are not the subject of a complainant employee's complaint or the County's enforcement actions; such cumulative rights which shall be unaffected by the provisions of this chapter shall include rights related to the violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.

Sec. 25-8. Retaliation.

- (a) Any employer who discharges or discriminates in any way against an employee for filing a complaint under this ordinance, or for materially supporting the efforts of another employee who files a complaint under this ordinance, violates this section.
- (b) Any person aggrieved under this section may file an independent civil action for relief in any court of competent jurisdiction in an analogous manner as enforcement of a violation of the Florida Whistle-Blower Act, § 448.103, Fla.Stat. A prevailing aggrieved party shall recover reasonable attorney's fees and costs.

Sec. 25-9. Discipline of Business Licenses.

Upon expiration of the time to appeal and after the order is final, Pursuant to Sec. 13-41, the County may suspend or revoke a local business tax receipt based on violations under this chapter.

Sec. 25-10. Severability and construction.

If any section, subdivision, sentence, clause, phrase or other portion of this local law, or the application of this amendment to any person or circumstance, is for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this subchapter, which remaining portions shall remain in full force and effect.

Sec. 25-11. Reporting.

A fiscal report regarding the administrative cost associated with the implementation of the Ordinance shall be submitted to the Board within six months of its effective date and one

year after its effective date. Thereafter, such fiscal report shall be submitted annually. The fiscal report should provide statistical data about the number of complaints, deficient complaints, successful conciliations, complaints referred to hearings and their disposition, the total amount of wages recovered, and any material program costs.

SECTION 2. SUNSET REVIEW. This ordinance shall be reviewed two (2) years from its effective date and may be extended upon approval of an amendment of this ordinance by the Board of County Commissioners. This ordinance shall sunset two (2) years from its effective date absent the foregoing amendment.

SECTION 3. CONFLICT. Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

SECTION 4. INCLUSION INTO THE CODE. The provisions of this Ordinance shall be included and incorporated within the Code of Ordinances of Osceola County Florida, and may be renumbered or relettered to accommodate such inclusion.

SECTION 5. FILING WITH DEPARTMENT OF STATE. The Clerk be and hereby is directed forthwith to send a certified copy of this Ordinance to the Bureau of Administrative Code and the Department of State pursuant to law.

SECTION 6. APPLICABILITY. This Ordinance shall be applicable throughout Osceola County's jurisdiction.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect upon filing with the Department of State.

BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

By: _____
Chairman/Vice Chairman

ATTEST:
OSCEOLA COUNTY CLERK OF THE BOARD

By: _____
Clerk/ Deputy Clerk of the Board

As authorized for execution at the Board of
County Commissioners meeting of:
