



Miami - Dade Wage Theft Ordinance

Miami-Dade County has enacted a wage theft Ordinance which, among other requirements, mandates when employees must be paid and provides for significant damages if an employer fails to pay an employee wages owed. The definition of wage theft under this Ordinance is expansive and would include an employer's violation of the Fair Labor Standards Act ("FLSA") or other federal/state wage and hour laws. The Ordinance also broadly defines who can pursue claims: *i.e.*, a union may file the claim on behalf of a member. Below is important information about the most significant aspects of the Ordinance

1. What is "wage theft" under this Ordinance?

Wage theft is defined as the failure of an *employer* to pay wages (according to the wage rate applicable to that employee) to an employee within a *reasonable time* from the date on which the employee performed the work. The amount of unpaid wages must exceed \$60 to be covered

2. Who is an employer?

An employer is any entity which employs any person, though independent contractors and government employees are excluded. Unlike the FLSA, there is no requirement for the entity to do a minimum dollar amount of business or be engaged in interstate commerce. This law impacts even the smallest employer.

a. Can supervisors be sued?

Yes. The term employer is defined in such broad fashion that any person acting on behalf of the employer (*directly or indirectly*, either individually or as an officer, agent or employee) can be held liable and sued under this Ordinance.

b. What does "directly or indirectly" mean?

While the Ordinance does not define the phrase "directly or indirectly", a conservative (expansive) reading would mean that payroll processing companies may be subject to liability under the Ordinance.

c. Does the Ordinance cover out-of-state employers with only one employee who works in Miami-Dade County?

Yes.

3. What is a reasonable time within which to make the required payment?

Fourteen (14) days from the date the employee performed the work.

4. What if an employer pays monthly or twice a month?

The period may be modified to thirty (30) days by a *written agreement* between the employer and employee.

a. What should this written agreement say?

"By signing below I knowingly and voluntarily agree that [name of employer], its parent corporation, subsidiaries, affiliates, successors and assigns may pay my wages due no later than thirty (30) days after the date on which I perform the work." Save this document in the personnel or payroll file of the employee. You should undertake the task of securing these signatures immediately. The sentence should be added to job applications for new hires.

b. What if an employee will not sign the written agreement?

The Ordinance does not address this issue, but as employees are employed at-will, an employer presumably can condition hire or continued employment upon execution of this written agreement.

c. Do executives and other high level employees need to sign this written agreement?

Yes. The Ordinance applies to all employees, not just hourly-paid or those covered by the FLSA as non-exempt.





5. Who can bring a claim under this Ordinance?

Any employee can bring a claim. In addition, a union or any other third-party can bring the claim on behalf of an employee. This Ordinance can be used by a union seeking to organize an employer as a means of advocating on behalf of targeted employees and pursuing/securing economic benefit for them. Also, we expect litigation from not-for-profit organizations on behalf of members. While some of these are well-established with members' interests at heart, a few are attorney-endorsed organizations used to promote litigation.

6. What are the damages for a violation of the Ordinance?

An employer found in violation is liable for three times the back wages owed. The back wages owed shall include liquidated damages.

7. Does the employee have to go to a government agency to pursue a claim?

Yes. The employee must first bring a claim for wage theft with the County.

8. What if the employee brings a separate court action for unpaid wages?

If an employee bring a court action for unpaid wages which also would be recoverable under the Ordinance prior to the time the Hearing Examiner issues a final determination, then that county Ordinance violation shall be deemed withdrawn. However, the withdrawal is narrow and leaves unaffected any cumulative rights: *e.g.*, the right to treble damages or the right to pursue a claim against an individual not subject to the FLSA.

9. When must the employee file a complaint with the County?

The employee must file a complaint within one (1) year of the alleged violation. If, however, a violation is ongoing then the employee may seek damages for any applicable statute of limitation period.

10. What should every employer be doing to comply?

- a. Obtain written authorizations from current employees who are paid in intervals longer than 14 days.
- b. Change the job application to include an authorization to pay in intervals longer than 14 days.
- c. Upon termination, make sure the employee receives his/her final paycheck no later than 14 days/30days (if you have a written authorization).
- d. Audit your payroll and FLSA compliance. The cost of non-compliance with the FLSA just tripled.

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