



Pinellas County Office of Human Rights

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To: Board of County Commissioners

Through: County Administrator Burton

CC: Jewel White, County Attorney

From: Paul Valenti, Director of Human Rights

Date: November 21, 2018

Re: Proposed Amendments to Wage Theft/Recovery Ordinance

Pinellas County's Wage Theft/Recovery Ordinance¹ was adopted on November 10, 2015. Since its effective date of January 1, 2016, over \$300,000.00 in unpaid wages has been recovered and paid to employees for uncompensated work performed. When adopted, the Board of County Commissioners requested staff from Pinellas County's Office of Human Rights return with suggested revisions to the ordinance as gleaned through its administration. Given our experience administering the ordinance, we believe the following proposed changes warrant your consideration:

1. Disallow Claims for Unpaid Wages in Excess of \$15,000 – We believe disputes above this threshold imply a complainant who has the sophistication and means to pursue their claim in a traditional judicial forum. Additionally, \$15,000 is the minimum amount in dispute required for civil claims to establish jurisdiction in the circuit courts of the State of Florida (see “**Threshold Amount**” in **§70-305, relating to Definitions**).
2. Disallow Claims from Employees with Prior Equity Stake - We have had wage theft claims from employees who previously held an equity stake in the employing entity. While these complaints presented facial claims under our ordinance, they also conflated the wage dispute with contractual disputes arising from the employee's sale of their stake in the employing business. Staff believes in these instances the contractual/commercial disputes are more appropriately litigated through court². We further

¹ Codified as Article IV, Chapter 70, of the Pinellas County Codes relating to Human Relations.

² By way of example, one claim for wages under our ordinance came from a doctor who sold his practice to another doctor, yet remained in the practice's employ. This claim has led to the highest award yet under our ordinance – over \$200,000 after being automatically tripled by operation of our ordinance. Though overturned on other grounds on appeal, we believe it worth considering whether a prior ownership interest precludes the ability to file a complaint under the ordinance.

believe these disputes ordinarily involve sophisticated parties, with appropriate available resources to seek vindication of their rights (if any) in a judicial forum. In short, we believe this scenario may fall outside the spirit of policy considerations for protection of unpaid employees originally contemplated by passage of our ordinance (**see “Employee” in §70-305, relating to Definitions**);

3. Disallow Trebling of Wages upon Full Payment Prior to Hearing - One reading of our ordinance would permit an employee to reject pre-hearing payment of the full amount of their wage theft claim to instead seek treble wages at hearing by operation of the ordinance. Staff recommends disallowing treble damages for any wage theft claim which the employer offers to pay in full prior to a hearing before a Special Magistrate³ (**see §70-308(a)(1)(B)**);
4. Limit Trebling of Wages to Balance Unpaid Prior to Hearing – As with full payments prior to hearing, staff recommends making it clear that only the balance of wages for which payment isn’t offered by the employer prior to a hearing before a Special Magistrate be subject to automatic trebling (**see §70-308(a)(1)(A)**);
5. Reduction of Award Trebled at Hearing if Paid within 14 Days - Staff understands the underlying intent of the ordinance is to ensure reasonably prompt payment of unpaid wages to employees. Currently, any amount found by a Special Magistrate at hearing to be owed but unpaid, is automatically trebled. We suggest reducing this to double the amount found due but unpaid at hearing if paid within 14 days. We believe this furthers the policy interest of reasonably prompt payment, while also reducing issues of future enforceability/collectability inherent to Special Magistrate orders (**see §70-308(a)(1) and §70-308(b)(2)**);
6. Payment of County’s Administrative Costs for Frivolous Complaints – Staff suggests allowing Special Magistrates order payment of the county’s administrative costs by complainant for any complaint found to be frivolous with no basis in fact or law⁴ (**see §70-308(a)(4)**);

³ Such an outcome almost occurred with one complaint under the ordinance. While that complainant ultimately did accept payment of the full amount claimed in the complaint, staff believes mediation/conciliation to be a key component of the ordinance. Therefore, we believe it contrary to the intent of the ordinance to deliberately refuse a tender of full payment of claimed wages, to instead potentially seek a triple recovery. **We underscore that this recommendation solely relates to instances when the full amount claimed by the complainant is in fact tendered, in writing, by the employer prior to hearing before a Special Magistrate.**

⁴ This provision exists under Osceola County’s Wage Theft Ordinance.

7. Enhanced Anti-Retaliation Protections - Staff recommends enhancing the anti-retaliation provisions of the ordinance to specifically include an employee who is discharged for filing a claim, or who assists another employee in filing a claim (for example, by serving as a complainant's witness as to hours worked at a hearing before a Special Magistrate, or advising a coworker of the protections afforded under the ordinance)⁵ (**see §70-308(a)(2)**);
8. Preclude Employers Found to have Engaged in Wage Theft From County Business Opportunities – We suggest precluding employers found to have engaged in wage theft from being eligible for county contracting opportunities by considering them “non-responsible” in their responses to any solicitation of county services or goods, if in the best interests of the county (**see §70-308(b)(6)**);
9. Requiring Additional Payments from Employers Found to Have Engaged in Multiple Acts of Wage Theft - We suggest adding a provision which allows a Special Magistrate to require additional payments payable to the county upon finding an employer to have engaged in multiple acts of wage theft (20% of the amount found to be owed in a second wage theft violation, 40% of the amount found to be owed in a third wage theft violation, and 60% of the amount found to be owed in a fourth wage theft violation) (**see §70-308(a)(6)**); and
10. Allow Special Magistrate's Order to Include Attorney's Fees - One reading of our ordinance would only contemplate an award of reasonable attorney's fees for seeking judicial enforcement of a Special Magistrate's order. Staff recommends clarifying the ordinance to make it clear a Special Magistrate's order may include an award of reasonable attorney's fees incurred prior to hearing upon proof of the same (**see §70-308(a)(5)**);

We remain committed to ensuring the underlying intent behind passage of Pinellas County's Wage Theft/Recovery Ordinance is met, and that all employees in Pinellas County have an avenue of recourse for securing unpaid wages.

I remain available at (727) 464-4880 to answer any questions you may have.

⁵ These enhanced anti-retaliation provisions exist under Osceola County's Wage Theft Ordinance.