



## Pinellas County Office of Human Rights

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To: Board of County Commissioners

Through: Mark Woodard, County Administrator

CC: Jim Bennett, County Attorney  
Bill Berger, Director, OMB  
Jack Loring, Workforce Development Manager  
Michelle Wallace, Sr. Assistant County Attorney  
Carl Brody, Sr. Assistant County Attorney

From: Paul Valenti, Director of Human Rights

Date: September 24, 2015

**Re: Authority to Advertise Public Hearing  
Proposed Wage Theft Recovery Ordinance**

Further to direction received from the Board of County Commissioners, staff has prepared a draft Wage Theft Ordinance which follows the “Miami-Dade County model” previously discussed at the Board’s meeting on July 30, 2015 (a copy of the draft Wage Theft Ordinance is attached as Exhibit A).

Staff has subsequently met with colleagues from the City of St. Petersburg to discuss potential efficiencies which may be realized through collaborative efforts to combat wage theft county-wide. These conversations lead staff to conclude that the probability of achieving such efficiencies is greatest by having our ordinance read as harmoniously as possible with the City of St. Petersburg’s.

### **Summary of Draft Wage Theft Ordinance:**

The draft Wage Theft Ordinance allows an employee to file a wage theft complaint with the Pinellas County Office of Human Rights (PCOHR) when the amount of wages in dispute is sixty (\$60.00) dollars or greater, and the employee has previously made demand of their employer for payment of wages which remain unpaid<sup>1</sup>.

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<sup>1</sup> Complainants will be advised of the option of filing a complaint with the United States Department of Labor if it appears coverage under federal law exists. If the complainant chooses to avail of this option, they will be provided contact information for this agency, and sign a statement acknowledging this election, without further action by the PCOHR.

Please address reply to:

Pinellas County Office of Human Rights  
[www.pinellascounty.org/humanrights](http://www.pinellascounty.org/humanrights)  
315 Court St.  
Clearwater, FL 33756

Office

of

Human

Rights

Once a complaint is filed, the PCOHR will serve the complaint on the employer, and immediately attempt mediation/conciliation of the dispute. Should such efforts prove successful, the matter would be resolved and the case closed.

Should mediation/conciliation prove unsuccessful, the matter will be referred to an administrative hearing before a Special Magistrate<sup>2</sup>.

At hearing, the parties will present their evidence, and the Special Magistrate will determine whether there is sufficient evidence to establish by a preponderance of evidence (i.e. is it “more likely than not”) that wage theft has occurred.

The draft Wage Theft Ordinance specifically provides that if there is sufficient evidence that the complainant performed work for the employer, and the employer otherwise had a legal obligation to maintain records relating to payment of wages but failed to do so, there will be presumption wage theft has occurred.

If the Special Magistrate determines there is insufficient evidence that wage theft has occurred, the matter will be closed and the case dismissed<sup>3</sup>.

If the Special Magistrate determines there is sufficient evidence that wage theft has occurred, they will determine the amount owed, based on the wage they establish as having been promised<sup>4</sup>. The draft Wage Theft Ordinance also allows the Special Magistrate to award three times the amount of wages determined to be owed as “liquidated damages”, as well as attorney fees if the complainant is represented by legal counsel.

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<sup>2</sup> Appropriate criteria will be developed for selection/appointment of Special Magistrates. One of the efficiencies which may be realized in having our Wage Theft Ordinance read harmoniously with the City of St. Petersburg’s Wage Theft Ordinance is the possibility of availing of the pool of volunteers they have identified and trained to conduct wage theft hearings.

<sup>3</sup> When this subject was last before the Board, there was some discussion of the potential burden on employers resulting from frivolous complaints. Staff believes the occurrence of specious complaints will be low. Additionally, Special Magistrates would not be compelled to conduct long and drawn-out hearings when it is clear the complainant has produced no evidence in support of their complaint.

Staff considered including within the draft Wage Theft Ordinance an investigative role for the PCOHR to assess complaints for sufficiency of evidence prior to hearing. As such a procedure would render our Wage Theft Ordinance substantially different than the City of St. Petersburg’s, and would make concerted efforts to combat wage theft county-wide near impossible, inclusion of such a procedure in our draft Wage Theft Ordinance was ultimately rejected.

<sup>4</sup> As previously discussed, state and federal law allows only for an order of payment of the legal minimum wage (\$7.25 per hour under federal law, \$8.05 per hour under state law). In this regard, the draft Wage Theft Ordinance affords greater protection to persons who are victims of wage theft.

Should the employer pay the award of the Hearing Officer, the matter will be closed. Should the employer refuse to pay the Hearing Officer's award, the complainant must seek enforcement of the order in civil court<sup>5</sup>.

**Considerations in Support of Draft Wage Theft Ordinance:**

As discussed above, staff understood the Board to have directed us to follow the "Miami-Dade County model." The draft Wage Theft Ordinance does so.

Moreover, as previously noted, staff believes the incidences of frivolous complaints would be very rare, and Special Magistrates would be authorized to end hearings quickly in instances where a complainant had no evidence to support their allegation of wage theft.

Additionally, the draft Wage Theft Ordinance affords the greatest opportunity to work collaboratively with the City of St. Petersburg to address the problem of wage theft on a county-wide basis. This in turn would maximize PCOHR's ability to administer a wage theft program within the confines of the Board's allocation of funds contained within the FY '15-'16 budget<sup>6</sup>.

Finally, staff understands that the Sheriff has expressed interest in having county-wide uniformity in procedures designed to combat wage theft<sup>7</sup>.

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

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<sup>5</sup> Staff will work with local bar associations and legal aid organizations to develop a list of attorneys willing to assist complainants seek enforcement of the Hearing Officer's award through judicial proceedings. Staff believes sufficient interest in response to this effort will be generated due to the provision in the draft ordinance which allows for the award of attorney's fees.

<sup>6</sup> Staff has also approached personnel with the City of Clearwater, who have expressed openness to further conversations upon the county's passage of an ordinance.

<sup>7</sup> Staff has contacted personnel from the Sheriff's Department to further discuss the issue of wage theft, and has provided the Sheriff's General Counsel a copy of the attached draft Wage Theft Ordinance. As of the date of this memorandum, however, we have not met to discuss this issue. Staff does expect to have further communications with personnel from the Sheriff's Department prior to this item coming before the Board again, and can provide a verbal update in this regard at that time.