

ORDINANCE NO. 19-__

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO THE WAGE THEFT AND RECOVERY CODE BY AMENDING SECTION 70-302 RELATING TO AUTHORITY; AMENDING SECTION 70-303 RELATING TO LEGISLATIVE FINDINGS OF FACT; AMENDING SECTION 70-304 RELATING TO INTENT AND PURPOSE; AMENDING SECTION 70-305 RELATING TO DEFINITIONS; AMENDING SECTION 70-306 RELATING TO WAGE THEFT VIOLATIONS; AMENDING AND RETITLING SECTION 70-307 RELATING TO PROCEDURES FOR WAGE THEFT COMPLAINTS; AMENDING AND RETITLING SECTION 70-308 RELATING TO ENFORCEMENT OF WAGE THEFT VIOLATIONS; AMENDING SECTION 70-309 RELATING TO APPEALS; DELETING SECTION 70-310 RELATING TO RETALIATION; AMENDING ALL SECTIONS FOR CLARITY, CONSISTENCY AND UNIFORMITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR AREAS EMBRACED; AND PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE.

WHEREAS, the Pinellas County Board of County Commissioners adopted the Wage Theft and Recovery ordinance pursuant to its police powers for the public safety, health and general welfare, effective January 1, 2016; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to amend the Wage Theft and Recovery ordinance in order to disallow claims from those who have had a prior ownership interest with the Employer and to include a cap on the Threshold Amount for complaints; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to amend the Wage Theft and Recovery ordinance in order to enhance Retaliation protections to those who file wage theft and/or Retaliation complaints; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to incentivize Employers to timely pay orders and to create enhanced enforcement mechanisms for wage theft and Retaliation violations; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to establish parameters in the amount of damages an Employee may be awarded if the Employee refuses all or part of the Wage Rate offered by the Employer prior to a hearing; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to establish standards in which a special magistrate may find against an Employee for filing a frivolous complaint.

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

Section 1. Ch. 70 Article IV of the Pinellas County Code is amended to read as follows:

ARTICLE IV. - WAGE THEFT AND RECOVERY

Sec. 70-301. - Title.

This article shall be known and may be cited as the "Wage Theft and Recovery Ordinance."

Sec. 70-302. - Authority.

This article is enacted pursuant to F.S. § 125.86, the home rule powers of Pinellas County (County) in the interest of health, safety and general welfare of the people, and County Charter section 2.03.

Sec. 70-303. - Legislative Findings of Fact.

It is hereby declared to be the policy of the County in the exercise of its police power for the public health, safety and general welfare, to eliminate and prevent wage theft. Eliminating the underpayment or nonpayment of wages earned by persons working in the County serves the public purpose 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.

Sec. 70-304. - Intent and Purpose.

It is the intent and purpose of this article to promote the general welfare of the citizens of the County through the continued analysis of any impacts from wage theft, the effectiveness of existing and emerging regulatory efforts and education efforts.

Sec. 70-305. - Definitions.

Adverse Action includes, but is not limited to, communicating to the Employee, whether directly or indirectly, explicitly or implicitly, the willingness to inform a government agency that the Employee is not lawfully in the United States.

Assisting Party shall have the same meaning as an Employee; except, that an Assisting Party shall not be a party in the wage theft complaint.

Employ means to permit a natural person to work for wages.

Employee means a natural person who performs work within the geographic boundaries of the County while being employed by an Employer, but shall not include any bona fide Independent Contractor nor a natural person who has had a prior ownership interest with the Employer. "Employee" may also include a natural person who performs work that benefits an Employer located within the geographic boundaries of the County even though the Employee may have performed work outside of the County.

Employer includes any person who, acting 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; but such term does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) The State of Florida.

Independent Contractor shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.

PCOHR means the Pinellas County Office of Human Rights.

Retaliation means threatening, intimidating, or taking other Adverse Action against Employees for asserting any claim to wages or assisting an Employee who asserts any claim to wages.

Reasonable Cause means the existence of sufficiently reliable and probative evidence for a reasonable person of ordinary prudence and caution to believe it is more likely than not wage theft has occurred.

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.

Threshold Amount means no less than \$60.00 and no more than \$15,000.00.

Wage Rate means any form of monetary compensation which the Employee agreed to accept in exchange for performing work for the Employer, whether daily, hourly, or by piece but in all cases shall be equal to no less than the highest applicable rate established by operation of any federal, state or local law. "Wage Rate" shall include earned paid time off, leave, vacation and sick pay.

Sec. 70-306. - 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 special magistrate appointed by the County or by a court of competent jurisdiction that an Employer is found to have unlawfully failed to pay wages, to receive up to three times the amount of back wages.

Sec. 70-307. - Procedures for Wage Theft and Retaliation Complaints.

(a) *Filing Wage Theft Complaints.*

In order for a wage theft complaint to be submitted to the County by, or on behalf of, an aggrieved Employee, the complaint must set forth the facts upon which it is based with sufficient specificity to identify the Employer and for the PCOHR to determine both that an allegation of wage theft has been made and that the Threshold Amount has been met.

(b) *Filing Retaliation Complaints.*

In order for a Retaliation complaint to be submitted to the County by, or on behalf of, an aggrieved Employee, the complaint must set forth the facts upon which it is based with sufficient specificity to identify the Employer and for PCOHR to determine that an allegation of Retaliation has been made in accordance with this article.

(c) An Employee or Assisting Party aggrieved by a wage theft and/or a Retaliation violation must file a complaint with a signed declaration, provided by the PCOHR.

(d) A complaint, as described herein, must be filed with the PCOHR no later than one (1) year after the last date upon which the Employee performed the work for an Employer with regard to which the Employee alleges a violation of this section has occurred ("Filing Deadline"); however, with respect to alleged ongoing violations, once a complaint has been made in compliance with the Filing Deadline, the PCOHR's enforcement capacity is limited only by the applicable statute(s) of limitations.

(e) *PCOHR.*

- (1) The duty of the PCOHR in determining whether a complaint meets the criteria is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.
- (2) Upon making such determination, the PCOHR shall serve the complaint and a written notice on the Employer setting forth the allegations, rights and obligations of the parties, including, but not limited to, the right to a due process hearing on the matter before a special magistrate and that the Employer may be responsible for the costs of the special magistrate and other enforcement costs.

(f) *Employer.*

Each Employer shall file an answer to the complaint with the PCOHR not later than twenty-one (21) calendar days after mailing of the complaint and notice. Upon request, the PCOHR will grant one (1) fourteen (14) calendar day extension to file an answer.

(g) *Mediation.*

- (1) It is the policy of the County to encourage mediation of the charges. The PCOHR will work with the parties in an attempt to mediate a complaint.
- (2) An agreement arising out of mediation shall be an agreement between the Employer and the Employee.
- (3) Whenever a party believes that the other party has breached a mediated agreement, the aggrieved party may file a civil action in a court of competent jurisdiction for enforcement of such agreement.
- (4) Nothing said or done in the course of attempting mediation under this section may be used as evidence in any subsequent proceeding under this section or otherwise without the written consent of the parties to the underlying charge of violation.

(h) *Hearing Before Special Magistrate.*

- (1) If mediation is declined or is unsuccessful, the PCOHR shall schedule a quasi-judicial hearing, as soon as practicable, before a special magistrate that it deems to be qualified

to hear wage theft matters and will notify the parties regarding hearing information. In conducting any hearing to determine whether a violation of this section has occurred, the special magistrate shall have the authority to administer oaths, issue subpoenas in accordance with the subsection titled “Subpoenas” herein, and compel the production of and receive evidence. The special magistrate shall have the authority to consolidate two (2) or more complaints into a single hearing where such complaints name the same Employer(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the special magistrate in wage theft and Retaliation matters is subject to appeal to a court of competent jurisdiction. The burden is on the parties to ensure a verbatim record of the hearing is made for use in any appeals.

- (2) All parties shall appear at the hearing in person, unless a written request has been made to PCOHR five (5) business days in advance of the hearing, excluding County holidays, for the special magistrate to allow persons to appear by telephone or video conference. Parties may appear with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing must be under oath.
 - (3) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
 - (4) The special magistrate 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.
 - (5) Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties setting forth written findings of fact and conclusions or law.
 - (6) In any proceeding under this section, the burden of proof by a preponderance of the evidence rests upon the Employee or Assisting Party except as provided in the subsection titled “Standards for Resolving Factual Disputes in Wage Theft Complaints”.
 - (7) All such hearings shall be de novo.
- (i) *Subpoenas.*
- (1) Upon written petition to the PCOHR, a party may be entitled to the issuance of a reasonable number of subpoenas, in the sole discretion of the special magistrate. A party must submit a written petition to the PCOHR for each subpoena requested and must provide a copy to the other party, as notice. Within ten (10) calendar days, the special magistrate shall grant or deny the written petition. Notice of petitions for subpoenas granted or denied will be provided by the PCOHR to both parties.
 - (2) Within ten (10) calendar days after service of a subpoena upon any person, such person may submit a written petition to the PCOHR for the special magistrate to revoke or modify the subpoena. A copy of the written petition to revoke or modify a subpoena must be provided by the petitioning party to all parties. The special magistrate 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) Upon refusal to obey a subpoena, the special magistrate or any party may seek enforcement of a subpoena issued under the authority of this section by filing a petition for enforcement in the County Court of Pinellas County, Florida.
- (j) *Standards for Resolving Factual Disputes in Wage Theft Complaints.*
- (1) The burden of proof with respect to adequate records falls on the Employer who fails to keep accurate records. The Employer must come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the Employee's evidence.
 - (2) The Employer fails to keep adequate records when the following three conditions are met:
 - a. Where by operation of a statute or regulation, an Employer has an obligation to keep records of an Employee's hours worked and/or records of compensation provided to an Employee; and
 - b. Where such records are imprecise, inadequate or do not exist; and
 - c. Where an Employee presents sufficient evidence to show, as a matter of just and reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done.
- (k) *Applicability of Florida Rules of Civil Procedure.*
- (1) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed herein.
 - (2) The provisions of Rule 1.080, Florida Rules of Civil Procedure, shall govern the service and filing of pleadings and other documents.

Sec. 70-308. - Enforcement of Wage Theft and Retaliation Violations.

- (a) *Order Issued.* At the conclusion of the quasi-judicial hearing and upon a finding of a violation, the special magistrate shall issue a written final order as follows:
- (1) If the preponderance of the evidence demonstrates a wage theft violation, the special magistrate shall order the Employer to pay wage restitution to the affected Employee in an amount equal to two (2) times the amount of the Wage Rate that the Employer is found to have unlawfully failed to pay the Employee. This amount includes the Wage Rate and additional compensation for the economic losses suffered by reason of the Employee not receiving their Wage Rate at the time it was due.
 - (A) Notwithstanding the above, if the special magistrate finds that the Employer offered a portion of the Wage Rate, in writing, to the Employee prior to commencement of the hearing and the Employee does not accept, in writing, the amount offered, the special magistrate must, on a finding of a wage theft violation, award the Wage Rate previously offered plus two (2) times the amount of any Wage Rate not offered prior to the hearing.

- (B) If the special magistrate finds that the Employer offered the full Wage Rate, in writing, to the Employee prior to the commencement of the hearing and the Employee did not accept, in writing, the amount offered, the special magistrate must award only the Wage Rate alleged to have been the subject of the wage theft complaint.
- (2) If the preponderance of the evidence demonstrates a Retaliation violation and there is a related wage theft complaint, regardless of the outcome of the wage theft complaint, the special magistrate must order the Employer to pay quantifiable damages on the amount ordered, excluding administrative fines and costs. If the preponderance of the evidence demonstrates a Retaliation violation and there is no related wage theft complaint, the special magistrate may order the Employer to pay for the Assisting Party's expenses, including but not limited to, lost wages, expenses incurred in gaining alternative employment, and reasonable attorney's fees.
 - (3) The special magistrate shall order the Employer to pay to the County an assessment of costs in an amount not to exceed actual administrative processing costs and costs of the hearing.
 - (4) If the special magistrate finds that a complaint was made by an Employee without any basis in law or fact, the special magistrate shall order the Employee to reimburse the County, within forty-five (45) calendar days, an amount not to exceed the actual administrative processing costs and costs of the hearing.
 - (5) The special magistrate may award attorney's fees upon proof by the party requesting attorney's fees.
 - (6) If a wage theft order was issued against an Employer within the three (3) years prior to the date of the filing of the current wage theft complaint, then in addition to the other remedies available under this section, the special magistrate may assess an amount equal to twenty percent (20%) above the amount ordered for a second offense, forty percent (40%) above the amount ordered for a third offense and an additional sixty percent (60%) above the amount ordered for a fourth offense. The amounts described herein are in addition to the amount ordered, excluding administrative fines and costs. The additional amounts ordered must be paid to the Board of County Commissioners.
- (b) *Failure to Comply with Final Order.* If an Employer has failed to comply with the special magistrate's order within thirty (30) calendar days from the date of the order:
- (1) The PCOHR shall, upon request of the Employer, grant the Employer a one-time additional fourteen (14) calendar days to comply with any portion of the order.
 - (2) The Employer shall be liable for three (3) times the Wage Rate, as specified in the special magistrate's order.
 - (3) The County may order the Employer, in addition to wage restitution ordered, to pay the prevailing Employee an amount equal to the applicable interest rate which accrues on the full amount of treble damages from the date upon which the findings of wage violation was made until the date upon which the amount is paid in full; and
 - (4) The County may order the Employer, in addition to assessment of costs ordered, to pay to the Board of County Commissioners an amount equal to the applicable interest rate

which accrues on the assessment of costs from the date upon which the special magistrate's order is issued until the date upon which the amount is paid in full.

- (5) The PCOHR may post the name of the Employer and any pertinent information relating to the order on PCOHR's website.
 - (6) The County may deem the Employer as non-responsible, in any responses to solicitations for goods or services submitted by the Employer, in the best interests of the County.
 - (7) This section may be enforced in accordance with all legal remedies available to the County.
- (c) *Joint and Severable Liability.* In any order issued by the special magistrate, the special magistrate may specify two (2) or more Employers as jointly and severally liable for any amount payable to the Employee or the County or both; however, the total amount the Employee or the County may receive from jointly and severally liable Employers shall not exceed the total amount for which Employers are jointly and severally liable.
- (d) *Cumulative Rights Preserved.* Nothing in this section shall be construed to limit, preclude or in any way abrogate the cumulative rights or remedies available to Employees at common law or by other statute which were not the subject of an Employee's complaint.
- (e) In any subsequent enforcement proceedings authorized by this section, a court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order.
- (f) *Enforcement by Private Action or by the State of Florida.*
- (1) *Enforcement by Private Action.* If during the pendency of a wage theft and/or Retaliation violation complaint process but prior to the issuance of a final order by a special magistrate, an 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 or damages for Retaliation based upon the same or substantially the same facts and allegations as the Employee's complaint to the PCOHR, or affirmatively or by consent participates in any such litigation, that Employee's complaint of wage theft and/or Retaliation shall be dismissed with prejudice with respect to any 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 an Employee's complaint.
 - (2) *Enforcement by the State of Florida.* If at any time during the pendency of a wage theft and/or Retaliation violation complaint process, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage theft or Retaliation violations involving the same or substantially the same facts as the Employee's complaint to the PCOHR, the complaint will be dismissed with prejudice.

Sec. 70-309. - Appeals.

Any adverse decision may be appealed to a court of competent jurisdiction within thirty (30) calendar days from the date of the final order issued by the special magistrate.

Section 2. Severability.

In the event that any court having jurisdiction over any case arising under this Section determines that any subsection or other provision of this section is invalid for any reason, the remaining subsections or other provisions shall continue to be in full force and effect, and towards that end the Board of County Commissioners declares this Section and its subsections and other provisions to be severable.

Section 3. Effective Date.

Pursuant to Section 125.66(2), Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the Ordinance with the Department of State.

Section 4. Areas Embraced.

This ordinance shall be applicable to all Employers in Pinellas County, including those located in any cities, towns or other municipalities therein; provided, however, nothing contained in this subdivision shall be construed to prevent any local government in Pinellas County from establishing wage theft laws distinct from those provided herein, by valid local government law, ordinance or regulation. All laws so established shall prevail within the jurisdictional limits of the local government and shall be enforced by the local government while in effect.

Section 5. Codification.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code; and that the sections of this Ordinance may be renumbered or re-lettered, and the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Amendment of Proposed Ordinance at Public Hearing.

Any section, subsection, sentence, clause, phrase, or provision of this Ordinance as proposed be amended, added, or deleted by majority vote of the Board of County Commissioners as a result of matters raised at the public hearing or in consultation with responsible authorities, and in such event, the amendments, additions or deletions shall be validly adopted without additional advertisement or hearing.

APPROVED AS TO FORM

By: 
Office of the County Attorney