

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.

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LABOR AND EMPLOYMENT CLIENT ALERT

**Miami-Dade County First County in U.S. to Create a New Claim
Against Employers: WAGE THEFT**



Miami-Dade County enacted a “Wage Theft” Ordinance effective March 1, 2010 at the urging of the South Florida Wage Theft Task Force, which includes labor unions among its members. The Ordinance invokes the County’s police power to “eliminate the underpayment or nonpayment of wages.” An employer in Miami-Dade who simply fails to pay appropriate wages may now be found to have committed “wage theft.” As reported in the Bureau of National Affairs’ Daily Labor Report, Miami Dade County is the first county in the country to have passed an ordinance prohibiting “wage theft.” Interestingly, Miami-Dade County Commissioners excluded the County from coverage.

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A NEW CLAIM AGAINST EMPLOYERS: WAGE THEFT**

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A wage theft violation occurs when an employer fails to pay any portion of wages owed to an employee, according to the wage rate applicable to that employee, within a “reasonable” period of time. The Ordinance defines wage rate as any means of monetary compensation that the employee has agreed to accept in exchange for work, whether daily, hourly or by piece rate. The Ordinance also defines reasonable time as “no later than fourteen (14) calendar days from the date on which the work is performed, but may be modified for a period not to exceed thirty (30) days by an expressed agreement between the employer and employee which has been reduced to writing and signed by the employee.”

If the Ordinance is given an expansive reading, it may cover bonuses, commissions, overtime, vacation and other amounts not traditionally thought of as a “wage rate.”

Triple Damages May Be Awarded

If an employer fails to pay wages within the required time and an employee files a complaint under the Ordinance, the accused employer will have to defend itself before a county-appointed hearing examiner. The Ordinance does not explain, however, on what basis the hearing examiner will be selected or the qualifications he/she must possess. The hearing examiner is not required to be a judge, lawyer or possess any background in labor and employment law. If a hearing examiner finds an employer has violated the Ordinance, the hearing examiner is to award damages that are three times the amount of the unpaid wages.

The Ordinance is extremely pro-employee. By way of example, after an employee asks for an administrative hearing, any time up to a final decision by the hearing examiner, the employee can withdraw his/her complaint, stop the hearing and proceed to state or federal court to sue the employer for unpaid wages. As a result, if an employee believes that the hearing is going badly, the employee can pull the plug on the hearing and then proceed to court and start the litigation over from square one. Employers will find that they may then have to defend themselves twice on the same claim.

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Potentially Devastating Effect on Employers

The Ordinance has the potential to have a devastating effect on employers in light of the threat of triple damages, especially if the Ordinance is given an expansive interpretation about what is considered wages. As a result, employers in Miami-Dade must be even more vigilant in properly and promptly paying wages, defining what is and is not considered to be wages and ensure that employees are properly categorized as either exempt or non-exempt under the federal Fair Labor Standards Act. Now, more than ever, employers must consider setting out in writing when wages will be paid (within 30 days), keep accurate time records on employees entitled to overtime and confirm that appropriate overtime is being paid. Otherwise, Miami-Dade County employers may find themselves the only employers in the country facing triple damages and the stigma of being found guilty of “wage theft.” The Ordinance is very controversial and may soon be subject to legal challenge in the courts.

Should you have any questions regarding the “Wage Theft” Ordinance, please do not hesitate to contact:

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ABOUT THE LABOR AND EMPLOYMENT DEPARTMENT

We understand that our clients are in an extremely competitive business market and that employers (large and small in both the public and private sectors) need timely, practical business-oriented advice on labor and employment issues. We understand that our clients must deliver services faster and better to remain competitive and profitable. We also understand that “human resources” are not a commodity, but real people with real workplace problems that are often difficult for our clients to address alone. We believe that partnering with our clients to provide strategic preventive counseling, training (in English, Spanish and Creole), audits and legal representation is the best antidote to complex and challenging workplace problems.

We also believe that if our clients become involved in a lawsuit, grievance, arbitration, claim of discrimination or wrongful discharge in any legal forum, they each deserve ethical and zealous representation. We are experienced trial attorneys, not just “litigators.” We are also labor attorneys with “in the trenches” experience in dealing with unions seeking to represent blue collar, white collar and professional employees.

Range of Services

- Employment Discrimination Litigation Strategy
- Employment Law Consulting
- Labor Law
- Litigation
- Litigation Avoidance
- Representation before Administrative Agencies

Top Ranked in Florida

*“The team, comprised of 18 attorneys in Miami, Tampa and Fort Lauderdale, **offers a superb service and extremely high-quality work.** The group is considered to be **among the best in the state** and the lawyers have a great depth of experience across a range of areas including union avoidance issues, employment discrimination litigation, noncompete agreements, and representing clients before administrative agencies. However, its practice is by no means confined to these areas and the lawyers are also **adept at dealing with a broad range of issues** including increased amount of litigation of late, particularly in relation to age discrimination and wage and hour class action along with FLSA-related matters. The team has been described as **synonymous with labor and employment in Florida** and **extremely experienced.**”*

– Chambers USA, 2009