

PROPOSED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, REPEALING AND REPLACING CHAPTER 20½ OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO PROHIBIT NONPAYMENT OF EARNED WAGES; PROVIDING FOR ADMINISTRATIVE HEARINGS AND ADMINISTRATIVE PROCEDURES FOR NONPAYMENT OF EARNED WAGES CLAIMS; PROVIDING FOR ENFORCEMENT OF ADMINISTRATIVE ORDERS; PROHIBITING RETALIATION; PROVIDING FOR REPORTING; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Board of County Commissioners finds that the underpayment or nonpayment of wages earned by persons working in Broward County harms the public health, safety, and welfare,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Chapter 20½ of the Broward County Code of Ordinances is hereby repealed in its entirety, and a new Chapter 20½ is hereby created to read as follows:

[Underlining omitted]

Chapter 20½. Nonpayment of Earned Wages.

Sec. 20½-1. Declaration of Policy.

In the exercise of its police power for the public health, safety, and general welfare, Broward County declares the prevention of nonpayment of wages earned within Broward County is of critical public importance including the following ways: by promoting economic security and dignity for those working in the County; by promoting business

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscoring type are additions.

1 and economic development through the elimination of unfair economic competition that
2 results from nonpayment or underpayment of earned wages; and by relieving the burden
3 on the public to subsidize employers whose employees are forced to rely on public
4 assistance because of unpaid or underpaid wages.

5 **Sec. 20½-2. Definitions.**

6 For purposes of this chapter:

7 (a) *Employ*, including as used in the terms employing or employment, means
8 to suffer or permit to work.

9 (b) *Employee* means a natural person who performs work within the geographic
10 boundaries of Broward County while being employed by an employer but shall not include
11 a bona fide independent contractor.

12 (c) *Employer* means any person or entity employing an employee, except such
13 term does not include:

14 (1) The United States or a corporation wholly owned by the government of the
15 United States;

16 (2) The state of Florida; and

17 (3) Any federally or state recognized Indian Tribes.

18 (d) *Independent contractor* has the same meaning as set forth in the Internal
19 Revenue Code and related implementing federal regulations.

20 (e) *Liquidated damages* means an amount equal to the amount of earned
21 wages a respondent employer is found to have failed to pay the complainant employee.
22 Liquidated damages are awarded in addition to back wages in order to compensate for
23 the economic losses suffered by reason of the employee not receiving earned wages at
24 the time such wages were due.

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.

1 (f) *Threshold amount* means sixty dollars (\$60).

2 (g) *Wage rate* means any form of monetary compensation that the employee
3 agreed to accept in exchange for performing work for the employer within the geographic
4 boundaries of Broward County, whether daily, hourly, or by the piece, but in all cases
5 shall not be less than the highest applicable minimum wage rate established by operation
6 of any applicable federal, state, or local law.

7 **Sec. 20 $\frac{1}{2}$ -3. Nonpayment of earned wages violations.**

8 The nonpayment of earned wages occurs when an employer fails to pay any
9 portion of wages due to an employee in accordance with the applicable wage rate.
10 Subject to the terms and conditions stated in this chapter, upon a finding by a Hearing
11 Officer appointed by Broward County that an employer has failed to pay earned wages,
12 such violation shall entitle an employee to receive from that employer back wages plus
13 liquidated damages in order to compensate for the economic losses suffered by reason
14 of the employee not receiving the earned wages at the time such wages were due.
15 However, notwithstanding anything to the contrary that may appear in this chapter, if the
16 employer proves by a preponderance of the evidence that the act or omission giving rise
17 to a nonpayment of earned wages complaint was in good faith and that the employer had
18 reasonable grounds for believing that the nonpayment was not a violation of this chapter,
19 the Hearing Officer may, in his or her sole discretion, award no liquidated damages or
20 may award liquidated damages in a lesser amount than would be otherwise awardable.

21 **Sec. 20 $\frac{1}{2}$ -4. Procedures for nonpayment of earned wages.**

22 (a) *Filing nonpayment of earned wages complaints.*

23 (1) Complaints alleging nonpayment of earned wages may be considered
24 under this chapter only if the following conditions are met:

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- a. The employee alleges a nonpayment of earned wages equal to or exceeding the threshold amount;
- b. The employee notifies the employer in writing, within sixty (60) days after wages were due to be paid but were not paid, that the employer has not paid all wages earned by the employee. For purposes of this chapter, wages are due no later than fourteen (14) calendar days after the date on which the work is performed unless the employer has established, by policy or practice, a pay schedule by which employees earn and are consistently paid wages according to regularly recurring pay periods, in which case such pay schedule shall govern. The notice must identify all wages to which the employee claims entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid earned wages through the date of the notice; and
- c. The employee alleges in the complaint that the employer did not pay all of the earned wages specified in the written notice, or otherwise resolve the claim to the satisfaction of the employee, within fifteen (15) days after the employer received the written notice or prior to the filing of the complaint, whichever is later.

(2) The complaint must comply with the following requirements, as well as any additional requirements imposed by the Broward County Administrative Code:

- a. The complaint must be signed under oath;

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscoring type are additions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- b. The complaint must include the employee's name, address, and telephone number (or alternate telephone number if the employee does not have a telephone), and the employer's name, business address, and telephone number;
- c. The complaint must include an explanation of the alleged violation(s) with sufficient specificity for the County to determine that an allegation of nonpayment of earned wages has been made, including, but not limited to, the date(s) the violation(s) occurred, the total dollar amount of unpaid earned wages, and an explanation of how the total amount of unpaid earned wages was calculated;
- d. The employee must include a true copy of the notice required by paragraph (a)(1)b. above;
- e. Supporting documentation must be attached to the complaint, such as copies of all demand letters sent by the employee to the employer; copies of employee paychecks or check stubs; copies of any agreements relating to payment of the employee's wages; the names and contact information of other persons who can substantiate the allegations of the complaint; copies of the employee's work schedule, timesheets, and W-2 forms; and any other records maintained by the employee of time worked or wages paid; and
- f. The complaint must include facts or supporting documentation to demonstrate that the other criteria stated in this chapter have been met.

(3) Either of the following may file a complaint under this chapter:

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscoring type are additions.

- 1 a. An employee aggrieved by any nonpayment of earned wages
2 prohibited by this chapter; or
3 b. Any entity whose member is an employee aggrieved by any
4 nonpayment of earned wages in violation of this chapter.

5 (4) A signed complaint for nonpayment of earned wages must be filed with the
6 County no later than one (1) year after the last date upon which the
7 complainant employee performed the work for which the employee alleges
8 a violation of this chapter. If the alleged nonpayment of earned wages
9 violation is ongoing at the time of the filing of the complaint, the complainant
10 may also seek recovery of amounts that accrue after the filing of the
11 complaint. With regard to amounts due at the time the complaint was filed,
12 an aggrieved employee may recover only those amounts that were
13 specified in the notice required by subsection (1) above that became due
14 and payable within the one (1) year period prior to the date the complaint
15 was filed.

16 (b) *Respondent.*

17 (1) Upon the filing of any complaint, the County shall promptly determine
18 whether the complaint meets the criteria established by this chapter, which
19 determination is limited to a comparison of the complaint and supporting
20 documentation to the requirements of this chapter. This determination may
21 not be based on further investigation.

22 (2) Upon a determination that the complaint complies with the criteria of this
23 chapter, the County shall serve on each respondent charged with
24 nonpayment of earned wages a copy of the complaint and a written notice

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 setting forth the allegations, rights, and obligations of the parties, including,
2 but not limited to, the right to a due process hearing before a Hearing
3 Officer, and that damages for which the respondent may be responsible
4 include the costs of the Hearing Officer and payment of attorney's fees and
5 other enforcement costs. Such service shall be made in the same manner
6 as service of a civil complaint under the Florida Rules of Civil Procedure.

7 (3) Each respondent shall file with the County an answer to the complaint no
8 later than twenty (20) days after service of the complaint and the written
9 notice referenced above.

10 (c) *Hearing before Hearing Officer.*

11 (1) Within thirty (30) days after the service of the complaint on the respondent,
12 unless otherwise extended by the County to permit conciliation efforts as
13 referenced below, the County shall appoint a Hearing Officer to hear the
14 claim. The Hearing Officer shall be a member in good standing with The
15 Florida Bar for at least the five (5) years preceding the appointment. In
16 conducting any hearing under this chapter, the Hearing Officer shall have
17 the authority to administer oaths, issue subpoenas, compel the production
18 of evidence, and receive evidence. The Hearing Officer shall have the
19 discretionary authority to consolidate two (2) or more complaints into a
20 single hearing if such complaints name the same respondent(s) and involve
21 allegations of sufficiently similar facts to justify consolidation.

22 (2) All parties shall appear at the hearing in person, with or without counsel,
23 and may submit evidence, cross-examine witnesses, obtain issuance of
24 subpoenas, and otherwise be heard. Testimony taken at the hearing shall

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 be under oath, and a transcript shall be made available at cost to any
2 interested party.

3 (3) Discovery shall be permitted by the Hearing Officer upon request of any
4 party and shall proceed in the manner provided by the Florida Rules of Civil
5 Procedure.

6 (4) The Hearing Officer may direct that the parties submit a prehearing
7 statement addressing the applicable issues of law and fact, identifying the
8 witnesses that will testify, and providing a list of all documents or other types
9 of exhibits that will be submitted.

10 (5) Upon the conclusion of the hearing, the Hearing Officer shall issue and
11 serve upon the parties a final order setting forth written findings of fact and
12 conclusions of law. The Hearing Officer's ruling shall be considered a final
13 administrative ruling, enforceable in a court of competent jurisdiction, and
14 reviewable as provided by applicable law.

15 (6) The burden of proof by a preponderance of the evidence rests upon the
16 complainant, unless all of the following three (3) conditions are met:

17 a. By operation of an applicable statute or regulation, the respondent
18 employer has an obligation to keep records of an employee's hours
19 worked and/or records of compensation provided to an employee;

20 b. Such required records are imprecise, inadequate, or do not exist; and

21 c. A complainant employee presents sufficient evidence to show, either
22 directly or as a matter of just and reasonable inference, the amount
23 or extent of work done and the amount of unpaid wages due for such
24 work.

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.

1 If the foregoing conditions are met, the burden of proof shifts to the
2 respondent. If the respondent employer fails to meet this burden, the
3 Hearing Officer may award damages based on the complainant's evidence.

4 (d) *Subpoenas.*

5 (1) Any party may request that a subpoena be issued by the Hearing Officer.
6 Witnesses summoned by subpoena shall be entitled to the same witness
7 and mileage fees as witnesses in proceedings in the County Court of
8 Broward County, Florida. Fees payable to a witness summoned by
9 subpoena issued at the request of a party shall be paid by that party.

10 (2) Within ten (10) days after service of a subpoena upon any person, such
11 person may petition the Hearing Officer to revoke or modify the subpoena.
12 The Hearing Officer shall grant the petition if the Hearing Officer finds that
13 the subpoena requires appearance or attendance at an unreasonable time
14 or place, requires production of evidence that does not relate to the matter,
15 does not describe with sufficient particularity the evidence to be produced,
16 requires compliance that would be unduly onerous, or for other good
17 reason.

18 (3) In the case of refusal to obey a subpoena, the Hearing Officer or any party
19 may seek enforcement of a subpoena issued under the authority of this
20 chapter by filing a petition for enforcement in a court of competent
21 jurisdiction. The court may award to the party prevailing in the enforcement
22 proceeding all or part of the costs and attorney's fees incurred in obtaining
23 the enforcement order.

1 (4) Any person who, in response to a subpoena, willfully fails or neglects to
2 attend and testify, to answer any lawful inquiry, or to produce records,
3 documents, or other evidence, if in his or her power to do so, may be fined
4 by a court of competent jurisdiction not more than five hundred dollars
5 (\$500), imprisoned not more than sixty (60) days, or both.

6 (5) Any person who makes or causes to be made any false entry or false
7 statement of fact in any report, account, record, or other document
8 submitted to the Hearing Officer, or who willfully mutilates, alters, or by any
9 other means falsifies any documentary evidence, may be fined by a court
10 of competent jurisdiction not more than five hundred dollars (\$500),
11 imprisoned not more than sixty (60) days, or both.

12 (e) *Applicability of Florida Rules of Civil Procedure.*

13 (1) The provisions of the Florida Rules of Civil Procedure shall govern the
14 computation of any period of time prescribed or allowed by this chapter or
15 by rules, regulations, or orders adopted pursuant to this chapter.

16 (2) All pleadings other than the initial complaint must be served by the parties
17 upon the Hearing Officer and all parties in the action in the manner provided
18 for by the Florida Rules of Civil Procedure. All other papers required to be
19 served by this chapter must be served by e-mail, if known, with a hard copy
20 mailed.

21 (f) *Conciliation.*

22 (1) It is the policy of the County to encourage conciliation of complaints. The
23 County will work with the parties in an attempt to conciliate. If possible, a
24 written conciliation agreement resolving the dispute shall be executed

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 between the complainant and the respondent prior to the referral of the
2 matter to a Hearing Officer.

3 (2) Whenever a party believes that the other party has breached a conciliation
4 agreement, the aggrieved party may file a civil action in a court of competent
5 jurisdiction for enforcement of such agreement. In such enforcement
6 proceeding, the court may award to the prevailing party all or part of the
7 costs and attorney's fees incurred in obtaining the enforcement order.

8 (3) Except with regard to actions to enforce a fully-executed conciliation
9 agreement, nothing said or done in the course of attempting conciliation
10 under this chapter may be used as evidence in any subsequent proceeding
11 under this chapter or otherwise without the written consent of the parties to
12 the underlying action under this chapter.

13 (g) *Representation by nonlawyer advocate.* Any person or entity may be
14 represented by counsel in any proceeding under this chapter. Any party, including
15 corporate entities, as an alternative to counsel, may be represented by a nonlawyer
16 advocate authorized by that party, except where such representation is prohibited by law
17 or disallowed by the Hearing Officer for good cause.

18 (h) *Enforcement by private persons or by the state of Florida.*

19 (1) *Enforcement by private persons.* During the pendency of a nonpayment of
20 earned wages violation proceeding but prior to the issuance of a final
21 decision by a Hearing Officer, if a complainant employee brings an action
22 in any state or federal court or a grievance or arbitration pursuant to a
23 collective bargaining agreement, seeking unpaid earned wages based upon
24 the same facts and allegations as the complainant employee's complaint to

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 the County, or affirmatively or by consent participates in any such litigation,
2 grievance, or arbitration, that complainant employee's complaint of
3 nonpayment of earned wages under this chapter shall be deemed
4 withdrawn with respect to any respondent employer named as a defendant
5 in such action. This section shall be interpreted narrowly so as to leave
6 unaffected any cumulative rights that are not the subject of the complainant
7 employee's litigation, grievance, or arbitration.

8 (2) *Enforcement by the state of Florida.* At any time during the pendency of a
9 nonpayment of earned wages violation proceeding, if the Hearing Officer
10 becomes aware of an enforcement action by the Florida Attorney General
11 or other body of the state of Florida based on wage violations involving the
12 same facts as the complainant employee's complaint to the County, the
13 Hearing Officer shall dismiss, without prejudice, the complainant
14 employee's complaint to the County with respect to the respondent(s)
15 named in such state enforcement action.

16 **Sec. 20½-5. Enforcement of nonpayment of earned wages violations.**

17 (a) *Order issued.* At the conclusion of a hearing, the Hearing Officer shall issue
18 a final written order stating whether the nonpayment of earned wages violation has been
19 established by a preponderance of the evidence. If such violation has been so
20 established, the final written order shall:

21 (1) Require the employer to pay wage restitution to the affected employee in
22 the amount of back wages that the respondent employer is found to have
23 unlawfully failed to pay the complainant employee, plus liquidated damages
24

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.

1 as compensation for the economic losses suffered by reason of the
2 employee not receiving his or her wage at the time it was due;

3 (2) Require the employer to reimburse the employee for any reasonable costs
4 and attorney's fees incurred by the employee in connection with the hearing;
5 and

6 (3) Require the employer to pay to the County an assessment of costs in an
7 amount not to exceed actual administrative processing costs incurred by
8 the County, including the cost of the hearing.

9 (b) *Failure to comply with Hearing Officer's order.* If any respondent employer
10 fails to comply with the Hearing Officer's final written order within thirty (30) days after
11 issuance of the order, interest shall accrue on all unpaid amounts awarded to the
12 employee and to the County with interest commencing as of the date of the order at the
13 applicable rate for judgments in Florida. Additionally, the employee, or the County with
14 regard to any amount owed to the County, may file an appropriate action in a court of
15 competent jurisdiction to enforce compliance with the order. If the employee or the
16 County files and prevails in any such action, the employee (or the County, as applicable)
17 shall be entitled to recover its reasonable court costs and attorney's fees from the
18 employer. If any respondent employer fails to comply with the Hearing Officer's final
19 written order within thirty (30) days after issuance of the order, the County shall also
20 record the Hearing Officer's order in the Official Records of Broward County, which order
21 shall become a lien against any property owned or later purchased by the noncomplying
22 party.

23 (c) *Cumulative rights preserved.* Nothing in this chapter shall be construed to
24 limit, preclude, or in any way abrogate the cumulative rights or remedies available to

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 employees at common law or by other applicable statute or regulation including, but not
2 limited to, rights related to the violation of overtime, minimum wage, living wage,
3 prevailing wage, or equal pay laws.

4 **Sec. 20 $\frac{1}{2}$ -6. Penalty for filing a frivolous complaint.**

5 If a Hearing Officer determines that any nonpayment of earned wages complaint
6 submitted to the County was without basis in law or fact, the Hearing Officer shall issue
7 an order requiring the applicable complainant (the employee or the entity filing the
8 complaint on behalf of its member) to reimburse, within thirty (30) days after the date of
9 the order: (1) the County for all administrative costs incurred by the County in connection
10 with such complaint; and (2) each respondent employer named in the complaint for all
11 reasonable costs and attorney's fees incurred by the employer in connection with the
12 complaint. If such reimbursement is not timely made, the employer, or the County with
13 regard to any costs incurred by the County, may file an appropriate action in a court of
14 competent jurisdiction to obtain such reimbursement.

15 **Sec. 20 $\frac{1}{2}$ -7. Retaliation prohibited.**

16 (a) No employer or any other person shall take any adverse action against an
17 employee because the employee has exercised, in good faith, the rights protected under
18 this chapter. An adverse action means an action that would discourage a reasonable
19 employee from making or supporting a complaint for nonpayment of earned wages, such
20 as discharging, demoting, or suspending the employee because the employee exercised
21 the rights protected under this chapter.

22 (b) Any employee subjected to retaliation by an employer because the
23 employee exercised rights protected under this chapter may pursue an action in a court
24

1 of competent jurisdiction against the employer for any applicable whistleblower law
2 violations.

3 **Sec. 20¹/₂-8. Required notice by employers.**

4 All employers that maintain an office within Broward County and employ individuals
5 to perform work within Broward County shall post notice of the administrative claim
6 created by this chapter in a conspicuous location and form, including as may be further
7 required by the Broward County Administrative Code.

8 **Sec. 20¹/₂-9. Reporting.**

9 A fiscal report regarding the administrative costs associated with the
10 implementation of this chapter shall be created by the head of the office or division that
11 oversees or administers the process created by this chapter and shall be submitted
12 annually to the County Administrator. The fiscal report should provide quarterly statistical
13 data including the number of inquiries, the number of complaints filed, the number of
14 hearings scheduled, the administrative costs of the hearings, and the results of the
15 hearings.

16
17 Section 2. SEVERABILITY.

18 If any portion of this Ordinance is determined by any court to be invalid, the invalid
19 portion will be stricken, and such striking will not affect the validity of the remainder of this
20 Ordinance. If any court determines that this Ordinance, or any portion hereof, cannot be
21 legally applied to any individual, group, entity, property, or circumstance, such
22 determination will not affect the applicability hereof to any other individual, group, entity,
23 property, or circumstance.

24
Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 Section 3. INCLUSION IN THE BROWARD COUNTY CODE OF
2 ORDINANCES.

3 It is the intention of the Board of County Commissioners that the provisions of this
4 Ordinance become part of the Broward County Code of Ordinances as of the effective
5 date. The sections of this Ordinance may be renumbered or relettered and the word
6 "ordinance" may be changed to "section," "article," or such other appropriate word or
7 phrase to the extent necessary in order to accomplish such intention.

8
9 Section 4. EFFECTIVE DATE.

10 This Ordinance is effective as of the date provided by law.

11
12 ENACTED

13 FILED WITH THE DEPARTMENT OF STATE

14 EFFECTIVE

15
16 Approved as to form and legal sufficiency:
17 Andrew J. Meyers, County Attorney

18 By /s/ Adam Katzman 06/27/18
19 Adam Katzman (date)
Senior Assistant County Attorney

PROPOSED

20
21 By /s/ Renée D. Harrod 06/27/18
22 René D. Harrod (date)
Deputy County Attorney

23 AMK/mm
24 06/27/18
Nonpayment of Earned Wages Ordinance
#41165

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.