

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 19, 2010 Consent Regular
 Workshop Public Hearing

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff seeks Board direction: Regarding wage theft.

Summary: Wage theft is the unlawful under payment or non-payment of workers' wages within a reasonable time. At the request of People Engaged in Active Community Efforts, Inc. (PEACE), the Board directed the office of the County Attorney to research and report on the Miami-Dade Wage Theft Ordinance and whether a similar ordinance could be enacted for Palm Beach County under the County Charter and federal and state law. Moreover, the Board directed the County Attorney to research and report on alternative remedies for wage theft currently available under existing federal and state law. The Board also directed staff to provide an estimate of the cost associated with implementing a wage theft ordinance. Staff seeks further Board direction whether to draft a proposed Palm Beach County wage theft ordinance for the Board's further consideration and public hearing. Countywide (EC)

Background: PEACE, a coalition of 24 church congregations from throughout Palm Beach County, approached the County and requested that the County enact and implement a wage theft ordinance similar to that enacted by Miami-Dade County, the first county in the country to enact a wage theft ordinance. PEACE states that there is a dire need for a county wage theft ordinance because enforcement of wage theft provisions under current federal and state law is inadequate and many claims of wage theft are either never addressed or not resolved. Moreover, PEACE states that claims that are filed with federal or state agencies are rejected because the agencies have no jurisdiction under existing federal and state law, or the agencies are understaffed and so overwhelmed with claims that claims do not receive adequate attention, leaving an aggrieved employee without remedy. The impact, according to PEACE, falls especially hard on the lower-wage labor market, particularly those employed as temporary workers or day laborers, and those working in the hospitality industry, which includes restaurants and lodging. PEACE states that these low-income employees cannot afford an attorney to assist them with their claims, and many are unable to navigate the laws and bureaucracy to file claims on their own. There are no federal or state laws preempting or prohibiting a county from enacting a wage theft ordinance, nor does the Palm Beach County Charter prohibit enactment of a wage theft ordinance. The Miami-Dade Wage Theft Ordinance, which became effective on March 1, 2010, was enacted to address the same issues and concerns voiced by PEACE. The Miami-Wage Theft Ordinance provides an alternative, county administered remedy to employees victimized by wage theft. **(Background cont. on page 3)**

Attachments:

1. Miami-Dade County Wage Theft Ordinance and Legislative Notes.
2. Overview of Miami-Dade Wage Theft Ordinance.
3. Overview of Federal and State Law Addressing Unpaid or Underpaid Wages.

Approved by: _____


County Attorney


Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<i>*</i> _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

C. OFMB Fiscal and/or Contract Development and Control Comments:

*** Costs are indeterminable at this time



OFMB



Contract Development and Control

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background (cont. from page 1): Attached is an overview of the Miami-Dade Wage Theft Ordinance. Essentially, under the Miami-Dade Wage Theft Ordinance, an employee can file a complaint for unpaid wages with the county's Department of Small Business Development. The department reviews the complaint before further processing and if it falls under the purview of the Fair Labor Standards Act (FLSA), it is referred to the Wage and Hour Division (WHD) of the U.S. Department of Labor. The department processes remaining, non-FLSA complaints. The department either resolves the complaint with the cooperation of the employer, or the complaint is heard by a county appointed hearing examiner. If the hearing examiner finds for the employee, the employee is awarded an amount equal to three times the amount of the unpaid wages. In addition, the employer may be assessed the administrative costs of processing the complaint and the cost of the hearing. It should be noted that the Florida Retail Federation (FRF) has filed suit against Miami-Dade County challenging the constitutionality of the Miami-Dade Wage Theft Ordinance. A copy of the FRF complaint has yet to be obtained and information is still being gathered regarding this law suit.

There are alternative remedies available to employees under federal and state law. Attached are overviews of federal and state laws that address wage theft issues. The primary federal legislation addressing wage theft is the Fair Labor Standards Act (FLSA), administered by the Wage and Hour Division (WHD) of the U.S. Department of Labor. The FLSA provides remedies to employees of certain employers who are not paid the federal minimum wage (currently \$7.25/hr.), or who are not paid overtime as required by the FLSA. Employees can either file an FLSA complaint with the WHD, or file a complaint in court. In either case, a prevailing employee is awarded the amount of his or her unpaid wages, plus an equal amount in liquidated damages. The FLSA generally applies to employers with annual business of \$500,000 or more that are engaged in interstate commerce, or the production or processing of goods for interstate commerce. Domestic service workers such as day workers and housekeepers are individually covered by the FLSA if their cash wages from one employer are \$1,700 or more for one calendar year, or if they work more than 8 hours per week for one or more employers.

Florida has its own minimum wage law (currently \$7.25/hr., the same as the federal minimum wage), which is provided in Article X, Section 24, of the Florida Constitution, and Chapter 448 of the Florida Statutes. Minimum wage claims under Florida law are filed in state court. A prevailing employee is awarded the amount of his or her unpaid wages, plus an equal amount in liquidated damages. The court may also award attorneys fees and cost to the employee. An employee can also file a court claim under State law for unpaid wages other than a minimum wage violation. The remedy under this scenario is an amount equal to the unpaid wages, plus attorneys fees and costs.

The cost of implementing and administering a wage theft ordinance for Palm Beach County is difficult to estimate. It has been proposed that if a wage theft ordinance is enacted by Palm Beach County, it would be administered by the Palm Beach County Office of Equal Opportunity. Currently, there is no proposal to add additional staff to administer a wage theft ordinance. Moreover, costs associated with administration of the ordinance and the hearing of resulting claims are directly related to the number of complaints filed, the number of complaints that can be resolved without going before a hearing examiner and the number of complaints requiring a hearing. In addition, the ordinance could provide, like Miami-Dade's does, that administrative and hearing costs be assessed against non-prevailing employers who go before a hearing examiner. The County's costs would then be offset in an amount directly related to the number of hearings in which the employee prevails.

MIAMI - DADE COUNTY, FLORIDA

CODE OF ORDINANCES

Chapter 22 - WAGE THEFT

Sec. 22-1. - Declaration of policy.

Sec. 22-2. - Definitions.

Sec. 22-3. - Wage theft violations.

Sec. 22-4. - Procedures for wage theft complaints.

Sec. 22-5. - Enforcement of wage theft violations.

Sec. 22-6. - Severability and construction.

Sec. 22-7. - Reporting.

Sec. 22-8. - Sunset review.

Sec. 22-1. - Declaration of policy.

It is hereby declared to be the policy of Miami-Dade County in the exercise of its police power for the public safety, health 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.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-2. - Definitions.

- (a) *Employee* shall mean a natural person who performs work within the geographic boundaries of Miami-Dade County while being employed by an employer, but shall not include any bona fide independent contractor.
- (b) *Employer* shall include any person who, acting either 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;
 - (3) Miami-Dade County;
 - (4) The Public Health Trust of Miami-Dade County; or
 - (5) An Indian Tribe.
- (c) *Employ*. The meaning of "employ", including as used in the term employment, shall include to suffer or permit to work.
- (d) *Independent contractor* shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.
- (e) *Wage rate* shall mean 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.

- (f) *Reasonable time* shall be presumed to be no later than fourteen 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.
- (g) *Threshold amount* shall mean sixty dollars (\$60.00).
- (h) *Liquidated damages* shall mean twice the amount a respondent employer is found to have unlawfully failed to pay the complainant employee. Where an employee is awarded treble damages for wage theft violations, liquidated damages are awarded in addition to back wages in order to compensate for the economic losses suffered by reason of the employee not receiving their wage at the time it was due.

(Ord. No. 10-16, § 1, 2-18-10; Ord. No. 10-37, § 1, 6-3-10)

Sec. 22-3. - 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 hearing examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-4. - Procedures for wage theft complaints.

- (1) Filing wage theft complaints.
 - (a) Threshold amount. In order for a complaint to be submitted to the County by, or on behalf of, an aggrieved employee, that employee must allege a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.
 - (b) Either of the following may file a written, signed complaint with the County using the procedures set forth in an Implementing Order:
 - (I) An employee aggrieved by a wage theft action prohibited by this article; or

- (ii) Any entity a member of which is aggrieved by a violation of this article.
 - (c) A signed complaint for wage theft must be filed with the County in the manner prescribed by Implementing Order no later than one (1) year after the last date upon which the complainant employee performed the work for a respondent employer with regard to which the employee alleges a violation of this article has occurred ("filing deadline"); however, with respect to alleged ongoing violations, once a complaint has been made in compliance with the filing deadline, the County's enforcement capacity is limited only by the applicable statute(s) of limitations.
 - (d) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent or respondents and for the County to determine both that an allegation of wage theft has been made and that the threshold amount has been met.
- (2) Respondent.
- (a) Upon the filing of any complaint, the County shall promptly determine that the wage theft complaint alleges wage theft, names at least one respondent and meets the threshold amount criterion. The duty of the County in determining whether a complaint meets this criterion 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.
 - (b) Upon making such determination, the County shall serve the complaint and a written notice on the respondent or person charged with the commission of a wage theft practice, 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 Hearing Examiner and that the respondent may be responsible for the costs of the Hearing Examiner and other enforcement costs. Such service shall be by certified mail.
 - (c) Each respondent shall file an answer to the complaint with the County not later than twenty (20) days after receipt of the complaint and notice from the Director.
- (3) Subpoenas.
- (a) If a Hearing Examiner is appointed, any party may request that a subpoena be issued by the Hearing Examiner. Witnesses summoned by subpoena of the Hearing Examiner shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party.

- (b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Hearing Examiner to revoke or modify the subpoena. The Hearing Examiner 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.
 - (c) In the case of the contumacy or refusal to obey a subpoena, the Hearing Examiner or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida.
 - (d) In any enforcement proceedings authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures.
 - (e) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.
 - (f) Any person who, makes or causes to be made any false entry or false statement of fact in any report, account, record or other document submitted to the Hearing Examiner pursuant to its subpoena or other order, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.
- (4) Applicability of Florida Rules of Civil Procedure.
- (a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.
 - (b) All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.
- (5) Standards for Resolving Factual Disputes.
- (a) Adequate Records. When the following three conditions are met:

- (I) Where by operation of some other statute or regulation, a respondent employer has an obligation to keep records of an employee's hours worked and/or records of compensation provided to an employee; and
 - (ii) Where such records are imprecise, inadequate or do not exist; and
 - (iii) Where a complainant 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;
- (b) Then the burden of imprecision falls on the respondent whose obligation it was to keep accurate records and the respondent 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 complainant's evidence; if the respondent fails to meet this burden, the Hearing Examiner or any court, whichever is applicable, may award approximate damages based on the complainant's evidence.
- (6) Conciliation.
- (a) It is the policy of the County to encourage conciliation of charges. The County will work with the parties in an attempt to conciliate the agreement. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to the referral of the matter to a Hearing Examiner.
 - (b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant.
 - (c) Whenever a party believes that the other party has breached a conciliation agreement, the aggrieved party may file a civil action in a court of competent jurisdiction for enforcement of such agreement.
 - (d) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of violation.
- (7) Hearing before Hearing Examiner.
- (a) Within fifteen (15) days after the service of the Complaint on the respondent, and after determination that the complaint meets the threshold and other requirements, any party may submit a written request for a hearing before a Hearing Examiner. The County shall appoint a Hearing Examiner that it deems to be qualified to hear wage theft matters. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Examiner shall have the authority to administer

oaths, issue subpoenas, compel the production of and receive evidence. The Hearing Examiner shall have the authority to consolidate two or more complaints into a single hearing where such complaints name the same respondent(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the Hearing Examiner in wage theft matters is subject to appeal in a court of competent jurisdiction.

- (b) In any hearing before the Hearing Examiner pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.
 - (c) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
 - (d) The Hearing Examiner 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.
 - (e) 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 of law.
 - (f) In any proceeding under this article, the burden of proof by a preponderance of the evidence rests upon the complainant.
- (8) Representation by Non-lawyer Advocate. Any person may be represented by counsel in any proceeding herein. Any party, including corporate entities, as an alternative to counsel, may be represented by a non-lawyer advocate authorized by that party in any proceeding herein unless specifically disallowed by the Hearing Examiner for good cause.
- (9) Enforcement by private persons or by the State of Florida.
- (a) Enforcement by private persons.
 - (i) If during the pendency of a wage theft violation complaint but prior to the issuance of a final decision by a Hearing Examiner, a complainant 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 based upon the same facts and allegations as the complainant employee's complaint to the County, or affirmatively or by consent opts to participate in any such

litigation, that complainant employee's complaint of wage theft shall be deemed withdrawn with respect to any respondent 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 a complainant employee's complaint.

- (ii) The County, upon becoming aware of any private action described herein shall advise the complainant and any respondent subject to the private action in writing within fifteen (15) days of this provision and its effect on the complaint. Within thirty (30) days of the issuance of such notice, the County will dismiss, with prejudice, the complainant's complaint only with respect to the respondent or respondents who are named as a defendant to the private action.

- (b) Enforcement by the State of Florida. If at any time during the pendency of a complaint of wage theft, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage violations involving the same facts as the complainant employee's complaint to the County, the County will dismiss, either with or without prejudice, the complainant employee's complaint with respect to the respondent or respondents named in such State enforcement action. The County shall advise the complainant and any respondent of such dismissal.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-5. - Enforcement of wage theft violations.

- (1) Order Issued. At the conclusion of a hearing and upon a finding of a wage violation, the Hearing Examiner shall issue a written order as follows:
 - (a) If the preponderance of the evidence demonstrates a wage theft violation, the Hearing Examiner shall order the employer to pay wage restitution to the affected employee in an amount equal to three times the amount of back wages that the respondent employer is found to have unlawfully failed to pay the complainant employee; this treble amount shall include the back wages in addition to liquidated damages as compensation for the economic losses suffered by reason of the employee not receiving their wage at the time it was due; and
 - (b) The County shall order the employer to pay to the Board of County Commissioners an assessment of costs in an amount not to exceed actual administrative processing costs and costs of the hearing.

- (2) Failure to Comply with Initial Order. If the County finds that any respondent employer has failed to comply with the Hearing Examiner's order within forty-five (45) days after written notice from the County, the County shall issue a further written order on the respondent employer as follows:
- (a) The County may, upon request of the respondent, grant the respondent an additional forty-five (45) days to comply with any portion of the order, unless such an extension has previously been granted; and
 - (b) The County shall order the employer, in addition to wage restitution ordered, to pay the prevailing complainant employee an amount equal to the applicable interest rate which accrues on the full amount of treble damages from the date upon which the finding of wage violation was made until the date upon which the amount is paid in full; and
 - (c) The County shall 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 Hearing Examiner's order is issued until the date upon which the amount is paid in full.
- (3) Joint and Severable Liability. In any order issued by the Hearing Examiner, the County may specify two or more respondents as jointly and severally liable for any amount payable to the complainant or the County or both; however, the total amount the complainant or the County may receive from jointly and severally liable respondents shall not exceed the total amount for which respondents are jointly and severally liable.
- (4) Cumulative Rights Preserved. Nothing in this article 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 a complainant employee's complaint or the County's enforcement actions; such cumulative rights which shall be unaffected by the provisions of this article unless they are made the subject of a complaint or the County's enforcement action, shall include, but shall not be limited to, rights related to the violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-6. - Severability and construction.

If any section, subdivision, sentence, clause, phrase or other portion of this local law, or the application of this amendment to any person or circumstance, is for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of

the remaining portions of the local law that added this subchapter, which remaining portions shall remain in full force and effect.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-7. - Reporting.

A fiscal report regarding the administrative cost associated with the implementation of the Ordinance shall be submitted to the applicable BCC Committee within six months of its effective date and one year after its effective date. Thereafter, such fiscal report shall be submitted annually. The fiscal report should provide quarterly statistical data about the number of inquiries, number of petitions for hearings, number of hearings scheduled, the cost of the hearings, and the results of the hearings.

(Ord. No. 10-16, § 1, 2-18-10)

Sec. 22-8. - Sunset review.

This article shall, subject to a sunset review by this Board, stand repealed five (5) years from its effective date.

(Ord. No. 10-16, § 1, 2-18-10)

Wage Theft

Prepared by the Office of the Commission Auditor

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January 12, 2010

Table of Contents

Introduction.....	1
Statistics and Trends.....	2
Findings.....	3
Studies.....	4
Current and Proposed Legislation.....	6
Local Efforts.....	11
Conclusion.....	12

Introduction

The Office of the Commission Auditor examined national data and trends pertaining to wage theft practices; what is wage theft and examples; what industries are impacted the most by wage theft; role of by the U.S. Department of Labor (DOL); current and proposed legislation; national efforts to curb these practices; and national and local statistics.

Over 100 million workers are supposed to be protected through the U.S. Department of Labor's Wage and Hour Division (WHD) to ensure workers are paid at least the federal minimum wage and overtime. However, of those 100 plus million workers, data indicates that the bottom half of the labor forces may be *robbed* or experience some form of wage theft every year.

The epidemic is receiving similar attention to the collapse of the implosion of the housing market. Due to the economic downturn, employers in health care, child care, retail, construction, hospitality and other industries, may become more creative and maneuver to cut costs even more by hiring workers they classify as "independent contractors" not covered by workplace laws.

In their annual reporting, the WHD shows they recovered more than \$185 million in back wages for over 228,000 employees in fiscal year 2008 to put the eight-year cumulative total of back wages collected by the agency at over \$1.4 billion. The agency concluded 28,242 compliance actions and assessed over \$9.9 million in civil money penalties.¹ The Economic Policy Foundation, a business-funded think tank, estimated that companies annually steal 19 billion dollars in unpaid overtime.

What is "Wage Theft"?

Wage Theft is the unlawful under payment or non-payment of workers' wages. Additionally, wage theft violates the Davis-Bacon Act, Fair Labor Standards Act (FLSA) and the Copeland Act.

Examples of Wage Theft include:

- Paying below the federal and state established minimum wage;
- Paying partial wages or not paying employee for all hours worked;
- Employers not keeping proper records of workers' hours;
- Failure to pay for work performed;
- Failure to pay overtime hours at time and a half pay for over 40 hour work weeks;
- Failure to pay final paycheck after employment is terminated;
- Forcing workers to work "off the clock";
- Employers keeping workers' tips and gratuities;²
- Classifying workers as "independent contractors" to avoid paying minimum wage, overtime and employers' share of FICA tax; and
- Employers pressuring workers not to file worker's compensation claims for injuries on the job to pay for medical care and missed days at work, forcing workers to pay for their treatment out of their own pocket or use health insurance.

¹ Department of U.S. Labor. Found at: <http://www.dol.gov/whd/statistics/2008FiscalYear.htm>

² As of July 24, 2009, the direct hourly wage of "tipped employees" in Florida, is \$4.23. This is based on the \$7.25 minimum wage minus the 2003 tip credit of \$3.02. www.floridajobs.org/minimumwage/index.htm

Wage Theft Impacts Everyone

Myth: Wage Theft only affects disadvantaged workers like undocumented immigrants.

- Widespread National epidemic;
- Impacts government's tax coffers;
- Impacts the economy by limiting spending power;
- Mostly affects low-wage labor market;
- Hourly employees; and
- Mostly affects agricultural, landscaping, janitorial, restaurant, garment manufacturing, retail, child care, home health care and many other workers.

Statistics and Trends

In this section, we analyzed national, state and local statistical data and trends. Also, several surveys reveal key characteristics of workplace violations that vary significantly by geographic area, industry, occupation, gender, race, and education.

The Low-Wage Industry table below suggests that the conditions are spreading from classic sweatshop operations to core employment sectors of the economy. At the same time, more foreign workers are seeking employment opportunities in this country. In combination, these trends reveal that current U.S. labor laws and government assistance programs may not be adequate to: (1) prevent and enforce violations; (2) provide free legal services to low-wage workers; (3) provide government assistance in the current economic downturn; and (4) curb gender and racial wage violation practices.

2008 Low Wage Statistics Table				
Low-Wage Statistics	Industries	Cases	Back Wages	Employees
	Agriculture	1,600	\$2,116,712	5,397
	Day Care	746	\$1,058,579	3,070
	Restaurants	3,942	\$18,917,992	23,433
	Garment Manufacturing	385	\$2,596,986	2,278
	Guard Services	633	\$13,595,350	13,138
	Health Care	1,302	\$11,403,813	15,768
	Hotels and Motels	875	\$2,445,094	5,034
	Janitorial Services	507	\$3,469,956	5,417
	Temporary Help	309	\$1,945,163	3,368
	Total Low-Wage Industries	10,299	\$57,549,645	76,903

Source: U.S. Dept. of Labor

The U.S. Census Bureau reports that an alarming number of people eligible for legal funded services (people living at or below 125 percent of the federal poverty level) grew to 53.8 million in 2008, up from

50.8 million in 2007. These figures only captured the beginning of the recession's start.³ This includes workers fighting to obtain wages illegally denied to them.

A key point in interpreting the findings above is that across the country, for several decades, a growing number of low-wage workers have and continue to experience some form of violation, despite additional resources and stricter policies from federal, state and local levels.

Findings

Southern states show that Latino workers are experiencing wage theft at an alarming rate: 80 percent reported wage theft; and many of them do not know which government agencies enforce labor laws.⁴ Workers that do seek help have been turned down, according to a report by Legal Services Corporation. Almost one million cases per year are currently being rejected because of the programs lack of sufficient resources.⁵

- One national survey covering 2,660 day laborers at 254 hiring sites in 139 municipalities in 20 states and Washington D.C. found that the overwhelming majority of day laborers were from Latin America. Undocumented day laborers are particularly susceptible to wage violations.⁶

Trends in enforcement show that between 1975 and 2004 the number of wage and hour investigations by the U.S. Department of Labor declined 14 percent; compliance actions completed declined by 36 percent; total of back wages assessed grew by 7 percent; and workers receiving back wages declined by 24 percent.⁷

Between 2003 and 2006, Fair Labor Standards Act complaints filed in federal court doubled, reaching 4,203. In 2007 alone, complaints increased nearly 60 percent to 7,310. State court wage-and-hour lawsuits also reached epidemic proportions; *states like California and Florida led with more than 1,000 each annually*. Average class-action settlements have reached \$23.5 million under the FLSA and \$24.4 million under state wage-and-hour laws.⁸

- In 2008, 197,000 employees received a total of \$140.2 million in minimum wage and overtime back wages as a result of FLSA violations.
- The WHD collected \$57.5 million in back wages for approximately 77,000 workers in low-wage industries—an increase of over 77 percent of back wages collected during fiscal year 2001 for violations in the same group of low-wage industries. The number of employees receiving back wages in the nine tracked low-wage industries increased nearly 10 percent over those receiving back wages in FY 2001. WHD expended

³ Brennan Center for Justice at New York University of Law

⁴ Under Siege, Life for Low-Income Latinos in the South

⁵ Documenting the Justice Gap in America, The Current Unmet Civil Legal Needs of Low-Income American, September 2009. Legal Services Corporation is an institution charged by the U.S. Congress and is federally funded to assist those who would otherwise be unable to afford adequate legal counsel.

⁶ Day Laborers in the U.S.; UCLA/University of Illinois, Jan. 2006

⁷ Trends in Wage and Hour Enforcement by the U.S. Dept. of Labor, Economic Policy Brief, Sept. 2005

⁸ Employment Law: The Shifting Legal Landscape, No. 19, 2008; Human Resources Executive; Garry Mathiason

approximately 35 percent of its FY 2008 enforcement hours on cases in the nine low-wage industries listed below.

Low-wage labor workers surveyed in major U.S. cities earning minimum wage, exposed violations most common in the following industries: (1) apparel and textile manufacturing; (2) personal and repair services; and (3) private households. In all three industries, more than 40 percent of workers were paid less than the minimum wage. Minimum wage violation rates were substantially lower in residential construction (13 percent); social assistance and education (12 percent); and home health care (12 percent). Industries such as retail, drug and grocery stores fell into the middle of the distribution, with about a quarter of their workers experiencing a minimum wage violation.⁹

Also, a low-wage worker earning minimum wage, when compared to a U.S.-born worker, does not have an eight hour a day, five days a week job. Most low-wage workers engage in erratic work schedules that may lead to inconsistent and unprotected jobs, increasing their exposure of *gender and racial wage violations*.

- Most significantly, women who are unauthorized immigrants, were more likely than men to experience minimum wage violations;
- Foreign-born Latino workers had the highest minimum wage violation rates of any racial/ethnic group;
- Violation rate for African-American workers was triple that of their white counterpart; and¹⁰
- Workers with high levels of education were still at significant risk.

Case Study

According to the New York Times, "Broken Laws, Unprotected Workers," a study conducted in 2008, is the most comprehensive examination of wage-law violations in the last decade. The study consisted of a survey of workers in low-wage industries in Chicago, Los Angeles, and New York City. By focusing on the three largest U.S. cities the study was able to show that although to different degrees, everyone is at risk of being impacted in some way throughout the nation. It is not only undocumented immigrant workers or vulnerable groups as previously assumed.

The study was conducted before the brunt of the recession hit and found that 68 percent of the 4,387 workers surveyed had experienced at least one pay-related violation in the previous work week. The study found that although women, immigrants and people of color are disproportionately affected by workplace violations, the industry and type of job is generally the predictor of the violations rather than the worker's demographic characteristics.

⁹ Broken Laws, Unprotected Workers; Violations of Employment and Labor Laws in U.S. Cities, page 30. In 2008, a survey of 4,387 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City was conducted. Staffs at the UIC Center for Urban Economic Development, the UCLA Institute for Research on Labor and Employment, and the National Employment Law Project provided support for this survey.

¹⁰ Ibid, page 48.

The study also addresses the various forms of wage theft such as, the right to be paid at least the minimum wage, the right to be paid for overtime hours, the right to take meal breaks, access to workers' compensation when injured on the job without fear of retaliation. The findings are alarming due to the extent to which many employment and labor laws are regularly violated, thus severely impacting the low-wage labor force in the nation's largest cities. Many small businesses stated they are forced to violate wage laws in order to remain competitive.

The study breaks down three findings in the following categories:

Finding 1: Workplace Violations are Severe and Widespread in Low-Wage Labor Markets

The study focused on the following violations: minimum wage violations, overtime violations, "Off the Clock" violations, meal break violations, pay stub violations and illegal deductions, tipped job violations, retaliation by employers, workers' compensation violations.

Finding 2: Job and Employer Characteristics is Key to Understanding Workplace Violations

Violation rates vary significantly by industries. For example, minimum wage violations are most common in apparel and textile manufacturing, personal and repair services and in private households. Childcare workers and cashiers had very high minimum wage and overtime violations. Additionally, workers paid in cash or who were paid a flat weekly rate had much higher violation rates than those who were paid a standard hourly rate or by company check.

Finding 3: All Workers are at Risk of Workplace Violations

The study found that wage theft violations occurred in all demographic groups not specifically by sex, ethnicity, or immigrant status.

The study suggests that three principles should be the basis of a new policy agenda to protect the rights of workers in America:

- Strengthen government enforcement of employment labor laws. Besides funding and additional staffing, new strategies are necessary to address the fact that violations are becoming standard practice throughout the low-wage labor industries.
- Update legal standards for the 21st century labor market. Raising the minimum wage, updating health and safety standards, eliminating exclusions that deny workers coverage, and strengthening the right of workers to organize through labor law reform are all key elements. America's employment and labor laws are out of date and some occupations and industries are partly or completely exempted from coverage. Even the existing protections are failing millions of workers under the current standards.
- Establish equal status for immigrants in the workplace. Any policy initiative to reduce workplace violations must prioritize equal protection and equal status in national immigration reform.

Federal Legislation

Addressing Wage Theft at the Federal Level: DOL administers and enforces more than 180 federal laws which cover many workplace activities for about 10 million employers and 125 million workers.¹¹ Specifically, the WHD is responsible for enforcing the federal labor laws that include minimum wage, overtime pay, recordkeeping, youth employment and special employment, family and medical leave, migrant workers, lie detector tests, worker protections in certain temporary worker programs, and existing wages for government services and construction contracts.¹² The major statutes and regulations administered by the DOL WHD pertaining to wage theft enforcement include the following:

- FLSA;
- Davis-Bacon Act; and
- Copeland Act.

FLSA: The FLSA was established in 1938 and prescribes standards for the basic minimum wage and overtime pay for most private and public employment. Since 1938, the FLSA has been amended numerous times to reflect a minimum wage rate increases, specify what type of time was considered compensable work time (Portal-to-Portal Act 1947), making it illegal to pay workers lower wages on the basis of their sex (Equal Pay Act 1963), prohibit employment discrimination against persons 40 years of age or older (Age Discrimination in Employment Act 1967), include expanded coverage to other state and local government employees (1974 FLSA), provide migrant and seasonal farm workers with protections of pay and working conditions (Migrant and Seasonal Agricultural Worker Protection Act 1983), and provide eligible employees up to 12 weeks of unpaid, job protected leave for certain family and medical conditions (Family and Medical Leave Act 1993).

The FLSA requires employers to pay covered employees (not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half times the regular rate of pay). For non-agricultural operations, it restricts the hours children under age 16 can work and forbids the employment of children under age 18 in certain jobs regarded as dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours in certain jobs regarded as dangerous.¹³

Employee Rights under FLSA: Employees may find out how to file a complaint by contacting the local WHD Office or by calling the program's toll-free help line at 1-866-4USWAGE (1-866-487-9243). Additionally, an employee may file a private suit, generally for the previous two years of back pay (three years in the case of a willful violation) and an equal amount as liquidated damages, plus attorney's fees and court costs.

Penalties/Sanctions under FLSA: The DOL uses a variety of remedies to enforce compliance with the Act's requirements. The WHD investigators upon identifying a violation recommend changes in employment practices to bring the employer into compliance, and they request the payment of any back wages due to employees. It is considered a violation of the FLSA to fire or in any other manner

¹¹ U.S Department of Labor website. Found at: www.dol.gov December 2009.

¹² Ibid.

¹³ U.S Department of Labor website. Found at: www.dol.gov/compliance/guide December 2009.

discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act.

Davis-Bacon Act (DBRA): The DBRA act was established in 1931 and requires all contractors and subcontractors performing on federal contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics. The DBRA labor standards must be included in the contracts. Contractors and subcontractors on prime contracts in excess of \$100,000 are to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.¹⁴

Since 1931, DBRA has been amended three times: First, in 1935, to ensure that contractors bidding on public works projects would not lower wages in order to achieve a lower bid; Secondly, in 1964, to include fringe benefits in the calculation of prevailing wage rates; and Lastly, in 1994, to include the construction, renovation or repair of buildings used by Head Start programs be subjects to DBRA standards.

Employee Rights under DBRA: The DBRA provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the DOL, for the type of work performed. The WHD accept complaints of alleged DBRA violations.

Penalties/Sanctions under DBRA: Contractors or subcontractors found not in compliance while performing work on Davis-Bacon covered projects may be subject to contract termination and debarment from future contracts for up to three years. Additionally, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages.¹⁵ Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.¹⁶

Copeland Act (C.A.): The C.A. was established in 1934, and it precludes a federal contractor from inducing any employee to sacrifice any part of the compensation required. The "Anti-Kickback" section of the C.A. applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction, prosecution, completion, or repair of any public building or public work, except contracts for which the only federal assistance is a loan guarantee. The regulations pertaining to C.A. payroll deductions and submittal of the weekly statement of compliance apply only to contractors and subcontractors performing on federally funded contracts in excess of \$2,000 and federally assisted contracts in excess of \$2,000 that are subject to federal wage standards.¹⁷

Employee Rights under C.A.: The provisions of the C.A. give covered workers on federal contracts the right to receive the full pay to which they are entitled for the work they perform and also gives such

¹⁴ Ibid.

¹⁵ U.S Department of Labor website. Found at: www.dol.gov/compliance/Guide December 2009.

¹⁶ Ibid

¹⁷ Ibid

workers the right to receive pay on a weekly basis. The WHD accepts complaints of alleged C.A. wage violations.¹⁸

Penalties/Sanctions under C.A.: Any contractor or subcontractor who induces an employee working on a covered contract to give up any part of the compensation to which he or she is entitled is subject to a \$5,000 fine, or imprisonment for up to five years, or both. Willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment.¹⁹

Recent Findings of Wage Theft: There were three separate testimony/reports issued by the U.S. Government Accountability Office (U.S. GAO) pertaining to the DOL WHD process for enforcement and investigations of Wage Theft complaints as inadequate leaving low wage workers vulnerable to wage theft. The three reports issued by GAO within the last 17 months include the following: GAO-08-973T, GAO-09-458T and GAO-09-629.²⁰

GAO-08-973T

This report highlights findings from GAO's investigation of WHD's process for investigating and resolving wage and hour complaints. The investigation was comprised of data obtained from WHD for over 70,000 closed cases from fiscal years 2005 to 2007. The GAO concluded that it had identified cases where initial screening by WHD officials incorrectly rejected valid complaints due to reliance of employer documentation, failure of WHD investigator to locate employers implicated in complaints, WHD investigations were limited to phone calls made to the complainant's employer, WHD investigations not initiating until one year from time of complaint (subjected the case to be dropped because of the two-year statute of limitations).²¹

GAO-09-458T

This report highlights the findings of a follow up investigation performed at the request of the Committee on Education and Labor (House of Representative) which directed the GAO to test the WHD intake process, provide additional case studies (10 GAO fictitious complaints) of inadequate WHD response to complaints and assess the effectiveness of WHD complaint intake process.²² The investigation revealed slow response times, failed conciliation attempts, instance of WHD investigator lying about investigative work and did not investigate GAO's fictitious complaint, investigation were between 2-5 months.

GAO's final assessment of WHD intake process ineffective to the extent that it discourages wage theft complaints, investigations are not fully processed nor compel employers to pay, many WHD offices did not properly record unsuccessful conciliations and WHD investigations were frequently delayed by months or years. However, GAO identified that once complaints were recorded and assigned a case investigator, the cases were adequately investigated.²³

¹⁸ Ibid

¹⁹ Ibid

²⁰ U.S. Government Accountability Office website. Found at: www.gao.gov/

²¹ U.S. Government Accountability Report GAO-08-973T, July 15, 2008.

²² U.S. Government Accountability Report GAO-09-458T, March 25, 2009.

²³ U.S. Government Accountability Report GAO-09-458T, March 25, 2009.

GAO-09-629

This report summarizes the findings of GAO-09-458 and provides recommendations for improving the WHD complaint intake and investigation process. The GAO assessment includes removing the statute of limitations of the FLSA (two years from the date of the violation) to prevent employees from losing back wages due to delays of WHD investigations (GAO encountered in several WHD offices backlog of investigations from high volume of complaints. In addition to the above-mentioned assessments, the GAO provided additional recommendations for executive actions to include:

- Administrator to reassess the current policies and processes to better ensure relevant case information is recorded in WHD database;
- Provide assurance that WHD personnel interacting with complainants' and employers adequately capture and investigate allegation of labor violations and provide appropriate customer service;
- Explore the implementation of automated search tools to WHD personnel to better assist in investigations;
- Information verification as it pertains to employers under investigations (IRS and other agencies); and
- Provide WHD with adequate human capital and resources available to investigate and handle volume of wage theft complaints.

The Secretary of Labor, Hilda L. Solis issued a news release on March 25, 2009 regarding the GAO Wage and Hour Division Enforcement, to re-state her commitment to enforcement of wage theft by adding 250 new investigators to its field offices to refocus on the agency's enforcement responsibilities.²⁴

U.S. Representative George Miller (D-CA), the chairman of the House Education and Labor Committee issued a press release introducing the "Wage Theft Prevention Act" (H.R 3303). The press release explains that the bill is based on GAO-09-458 recommendations that will ensure claims investigation delays will not result in permanent loss of back pay for workers.²⁵

State Legislation

Addressing Wage Theft at the State Level: The DOL WHD State Labor Office Contact for Florida is Cynthia R. Lorenzo, Director of the Agency for Workforce Innovation.²⁶ The Agency for Workforce Innovation is Florida's lead state workforce agency and directly administers the state's Labor Market Statistics program, unemployment, compensation, Early Learning and various workforce development programs.²⁷

The Florida Statutes provides for wage protections under Chapter 448 General Labor Regulations which include terms and conditions of employment, notification of the state minimum wage and employee remedy and relief of wage violations. Additionally, Article X, Section 24, Constitution of the State of Florida sets forth provisions that address the minimum wage rates, remedy and enforcement of wage violations.

²⁴ United States Department of Labor Website. Found at: <http://www.dol.gov/opa/media/press>

²⁵ Committee on Education and Labor Website, Found at: <http://edlabor.house.gov/newsroom/2009>

²⁶ United States Department of Labor Website. Found at <http://www.dol.gov/whd/contacts/state>

²⁷ Agency for Workforce Innovation Website, Found at: <http://www.floridajobs.org>

Recent Rulings:

- New York City, February 2009, a leading chain of gourmet grocery stores agreed to pay nearly \$1.5 million in unpaid wages to 550 workers.
- New York City, 2008- Federal Judge ordered Saigon Grill restaurant to pay 36 of its delivery workers \$4.6 million in owed wages; they had routinely worked 13-hour shifts for as little as \$1.60 per hour.
- L.A. City Attorney filed criminal charges against owners of four car washes, charging them with failure to pay the minimum wage and provide employees with breaks.
- Illinois, 2008 – Temporary Staffing Agency settled a class action suit with over 3,300 workers, totaling close to half-a-million dollars.
- Wal-Mart 2008, settled 63 cases in 42 states. The company forced employees to work “off the clock” (requiring unpaid work after employees had clocked out at the end of their official shifts. The settlement totaled \$352 million in unpaid wages and involved hundreds of thousands current and former employees.
- Federal Express drivers spent years pursuing a legal claim for employee status as they were illegally classified as “independent contractors” receiving no benefits, lost protection of most employment and labor laws, had to pay all of their job related expenses such as fuel, vehicle maintenance and insurance. In October 2008, the court awarded more than 200 FedEx drivers in California \$14.4 million to compensate for the violations.

South Florida

In Miami-Dade, dozens of workers each week, many on the low end of the pay scale, file claims for overtime and minimum wage violations in Florida state and federal courts. According to the Administrative Office of the United States Courts, for the past five years the Southern District of Florida alone has averaged 28.7% of all Fair Labor Standards Act cases filed in the United States.²⁸

The Miami-Dade Equal Opportunity Board (EOB) has experience in assisting workers and dealing with employers who do not follow the law.²⁹ The process is cost-effective and often cases can be resolved with an initial investigation and mediation. The EOB also has the power to fine and subpoena employers, which is an important enforcement mechanism. During FY 2007-08, the EOB obtained \$372, 028 in back wages and other benefits for discrimination victims. Since its establishment, the EOB has obtained more than \$10,000,000 in back pay and other benefits for victims. *However, the EOB has not been delegated the authority to deal with wage theft.*

²⁸ Case No 07-80829-CIV-RYSKAMP/VITUNAC. Order Adopting the Report and Recommendations

²⁹ The EOB is a quasi-judicial as well as an advisory board charged with the enforcement of Miami-Dade County's Human Right Ordinance, codified as Chapter 11A, as amended, Articles I, II, III, and IV. The Human Ordinance makes it unlawful to discriminate against any person in Miami-Dade County in employment, public accommodations, credit and financing practices and housing accommodations. The EOB also enforces the Miami-Dade County Family Leave Ordinance and the Domestic Violence Leave Ordinance.

Conclusion

As this examination demonstrates, workers in the bottom half of the economy may be exposed to unsuitable working conditions that include no pay or minimal pay. Some of them find themselves being discriminated against and exploited with nowhere to turn. Federal, state and local governments are embarking in outreach efforts and modifying legislation and strengthening enforcement to curb these cruel and unjust practices.

There is an indirect impact on federal and state programs, businesses, and law-abiding employers. It can reduce revenue that supports such programs as Social Security, Medicare, unemployment insurance, and workers' compensation. Further, employers with responsible business practices may be undercut by competitors to reduce their costs, for example, by not paying payroll taxes or providing benefits to workers.

The Miami-Dade Board of County Commissioners (BCC) has declared an overall interest in their authority over wages and benefits in FY 2009-10.

- There are presently no specific rules mandating procedures in Miami-Dade County government with regard to addressing, enforcing and preventing wage theft. The stated purpose of the proposed ordinance is to prevent and/or eliminate employees' working in Miami-Dade County, which are underpaid or not paid for work performed.

Overview of the Miami-Dade Wage Theft Ordinance

The Miami-Dade Wage Theft Ordinance went into effect on March 1, 2010.

The significant provisions of that ordinance are as follows:

Wage theft is defined as the failure of any employer to pay any portion of the wages due to an employee within a reasonable time from the date on which that employee performed work for which those wages were compensation. A reasonable time is defined as 14 days after the work was performed unless the respondent employer has a different pay schedule established by policy or practice.

The complainant employee may file a signed written complaint with the county no later than one year after the employee performed the work for which he or she was unpaid or underpaid.

The complaint must sufficiently identify the respondent employer, provide sufficient facts to determine that an allegation of wage theft has occurred and that the threshold amount of \$60.00 has been met. The county determines the adequacy of the complaint based on the face of the complaint only, and does not conduct its own investigation of the allegations.

After the county determines the adequacy of the complaint, the county serves the respondent employer with a copy of the complaint.

The respondent employer must file an answer to the complaint with the county within 20 days of receiving the complaint.

The county encourages conciliation of complaints and will work with the complainant employee and respondent employer to enter a conciliation agreement before the complaint is referred to a hearing examiner.

Within 15 days of service of the complaint upon the respondent employer, either party may submit a written request for a hearing before a county appointed hearing examiner.

If the complainant employee proves to the hearing examiner by a preponderance of the evidence that wage theft has occurred, the hearing examiner shall order the respondent employer to pay the complainant employee an amount equal to three times the amount of back wages that the respondent employer unlawfully failed to pay the complainant employee. The hearing examiner shall also order the respondent employer to pay the county costs not to exceed the actual cost of administrative processing and the cost to conduct a hearing.

The respondent employer has 45 days to comply with the order of the hearing examiner.

Overview of Federal and State Law Addressing Unpaid or Underpaid Wages

A. Federal Law

1.) Fair Labor Standards Act (FLSA)

The FLSA requires certain employers to pay employees at least the federal minimum wage, which is currently \$7.25 per hour. The FLSA further requires that employers pay covered, non-exempt employees at least one-and-one-half times their regular rate of pay for any hours worked over 40 hours in a work week.

The FLSA is enforced by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL).

An employee may file a complaint with the WHD alleging a violation of the FLSA, or an employee can file a private suit in court.

An employee can be awarded back pay for unpaid wages under the FLSA for the two years previous to filing the complaint. If an employer's violations of the FLSA are determined to be willful, then the employee can be awarded back pay for three years previous to filing the complaint.

An employer can be required to pay all unpaid wages occurring during the appropriate time frame, plus an equal amount in liquidated damages. Moreover, an employer can be required to pay reasonable attorney's fees and costs.

The coverage of the FLSA applies to all employees of any employer that -

- a. Has employees engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for interstate commerce; and
- b.
 - i.) Has annual gross sales or business of \$500,000 or more; or
 - ii.) Is operating a hospital or institution primarily engaged in the care of the sick, aged, or mentally ill who reside on the premises; or
 - iii.) Is operating a school for mentally or physically disabled or gifted children; or

iv.) Is operating a preschool, an elementary or secondary school, or an institution of higher education; or

v.) Is an activity of a public agency.

Employees of employers not covered by the FLSA may still be individually covered if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Moreover, domestic service workers such as day workers and housekeepers are individually covered by the FLSA if their cash wages from one employer in calendar year 2010 are at least \$1,700, or they work a total of more than 8 hours per week for one or more employers.

2.) The Davis-Bacon and Related Act (DBRA)

The DBRA applies to contractors and sub-contractors on contracts for the construction, alteration or repair of public buildings or public works exceeding \$2000 that are financed in whole or in part by federal funding.

Employers covered by the DBRA must pay their laborers and mechanics at least the prevailing wage rate and fringe benefits for corresponding work on similar projects in the area, as determined by the DOL.

An employee alleging a violation of the DBRA may file a complaint with the WHD of the DOL or file suit in court.

B. State Law

1.) Florida Minimum Wage

Article X, Section 24, of the Constitution of the State of Florida provides for the establishment of the Florida minimum wage rate, which is currently \$7.25 per hour. This amendment further provides for the remedy and enforcement of minimum wage violations.

An employee alleging a violation of the Florida minimum wage law may file a civil action in a court of competent jurisdiction.

If a plaintiff employee prevails, he or she shall be awarded the full amount of any back wages unlawfully withheld, plus an equal amount in liquidated damages. In

addition, the prevailing plaintiff employee shall be awarded reasonable attorney's fees and costs.

The statute of limitations for actions to enforce the Florida minimum wage shall be four years. If the violation of the Florida minimum wage law is found to be willful, then the statute of limitations is five years.

In addition, an employer found liable for willfully violating the Florida minimum wage shall be fined by the state in the amount of \$1000 for each violation.

Additional guidelines regarding the enforcement and available remedies under Florida's minimum wage law are set forth in Chapter 448, Florida Statutes (see below).

2.) Chapter 448, Part I, Florida Statutes – Terms and Conditions of Employment

An employee alleging that he or she is due unpaid wages from an employer may file a complaint in state court.

A prevailing plaintiff employee shall be awarded an amount equal to the amount of unpaid wages. In addition, the prevailing plaintiff employee may be awarded reasonable attorney's fees and costs.

Chapter 448 also prohibits an employer from taking any retaliatory personnel action against an employee who has disclosed, or threatened to disclose, to any appropriate government agency a policy or practice of the employer that is in violation of any law, rule or regulation.

Section 448.110, Florida Statutes, also provides guidelines for the enforcement of the Florida minimum wage law in Article X, Section 24, of the Florida constitution. This statute requires that before an employee files a claim in state court, the employee must first notify his or her employer in writing of the alleged violation, including the actual or estimated dates and hours for which payment is sought and the total amount of alleged unpaid wages. If the employer does not resolve the claim to the satisfaction of the employee within fifteen days of the employee's notice, then the employee may file a complaint in state court. The remedies available under this statute are the same as those set forth in Article X, Section 24, of the Constitution of the State of Florida. However, this statute provides that if the employer proves that the violation of the Florida minimum wage law was in good faith, or that the employer had reasonable grounds to believe that there was no violation, then the court may, in its discretion, not award liquidated damages and award an amount not to exceed the actual unpaid wages.