

• **Sec. 15-40. - Declaration of policy; legislative findings.**

It is hereby found, determined and declared that:

(a)

The Research Institute on Social Policy at Florida International University recently issued two studies that document that wage theft is a significant problem in Florida and more specifically, St. Petersburg.

(b)

Eliminating the underpayment or nonpayment of wages earned by persons working in the City serves a public purpose by:

(1)

Providing economic security for persons working in the City;

(2)

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

(3)

Reducing the number of employees who rely on public assistance for essential needs because their employer does not pay or underpays earned wages.

(Ord. No. 161-H, § 1, 4-16-2015)

• **Sec. 15-41. - Definitions.**

As used in this article the following terms shall have the meaning ascribed to them:

*Employ* shall mean to permit a person to work for wages.

*Employee or complainant employee* shall mean a natural person who performs work within the geographic boundaries of the City while being employed by an employer, but shall not include any bona fide independent contractor.

*Employer or respondent employer* shall include any entity or 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. Employer includes a third-party labor provider, 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; or

(3)

The City of St. Petersburg.

*Hearing officer* shall mean an attorney who has been licensed to practice law in the State of Florida for a period of at least five years, and who the City determines, in its absolute discretion, is qualified to hear wage theft matters.

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

*Liquidated damages* shall mean twice the amount a respondent employer is found to have unlawfully failed to pay the complainant employee. 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 the wage at the time it was due as well as to serve as a deterrent to employers.

*POD* means the person officially designated by the Mayor to perform the duties described in this article.

*Reasonable time* shall be presumed to be no later than 14 business days from the date on which the work is performed unless the employer has established, by policy or practice, a pay schedule whereby employees earn and are consistently paid wages according to regularly recurring pay periods in which case such pay schedule shall govern.

*Threshold amount* shall mean \$60.00.

*Wage rate* shall mean any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether a salary, daily or hourly wage, or by piece, and whether exempt or non-exempt from the Fair Labor Standards Act and other federal, state or local overtime laws. In all cases the wage rate shall be no less than the highest applicable rate established by operation of any federal, state or local law.

(Ord. No. 161-H, § 1, 4-16-2015)

- **Sec. 15-42. - Wage theft violations.**

An employer commits wage theft when the employer fails to pay wages, or a portion of wages, due to an employee according to the wage rate and other laws applicable to that employee within a reasonable time from the date on which that employee performed the work for which those wages were compensation. Upon a finding by a hearing officer that an employer failed to pay wages, or a portion of wages, such violation shall entitle an employee to receive back wages in addition to liquidated damages and reasonable costs and attorney's fees from that employer as stated in the hearing officer's order.

(Ord. No. 161-H, § 1, 4-16-2015)

- **Sec. 15-43. - Procedures for wage theft complaints.**

(a)

*Filing wage theft complaints.*

(1)

The employee must file a written, signed complaint with the City Clerk. Any person or entity may assist the employee in filing his or her complaint.

(2)

The POD will only process a complaint alleging a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.

(3)

A signed complaint for wage theft must be filed with the City Clerk no later than one calendar year after the date wages were due to be paid for work performed for a respondent employer. If the alleged wage theft violation is ongoing at the time of the filing of the complaint, the complaint may also seek recovery of amounts that accrue after the filing of the complaint.

(4)

The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent employer or respondent employers, to determine that the threshold amount has been met, and to identify that an allegation of wage theft has been made.

(b)

*Respondent employer.*

(1)

Upon the filing of any complaint, the POD shall promptly determine whether the complaint alleges wage theft, names at least one respondent employer and meets the threshold amount. The duty of the City to determine whether a complaint meets these criteria is limited to receiving the complaint and comparing the information provided in the complaint to the required criteria. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.

(2)

Upon making such determination, the POD shall serve the complaint and a written notice on the respondent employer, setting forth the allegations, rights and obligations of the parties including, but not limited to, the right to a due process hearing on the matter before a hearing officer and that the respondent employer may be responsible for the costs of the hearing officer and other enforcement costs. Such service shall be by mail and is presumed served upon mailing unless all mail is returned.

(3)

Each respondent employer shall file an answer to the complaint with the POD at the address specified in the notice not later than 21 days after service of the complaint and notice from the City. The POD may grant one extension, not to exceed 30 days, for good cause. If no extension is granted by the POD and the POD does not receive an answer to the complaint, the POD will proceed with the conciliation process. If the respondent employer pays the employee the underpayment before the conciliation process has commenced, the complaint will be dismissed upon verified proof of payment and acknowledgement by the employee.

(c)

*Conciliation.*

(1)

It is the policy of the City to encourage conciliation of complaints. After the complaint is filed, the POD will coordinate a conciliation process to attempt to resolve the complaint by agreement of both parties. If possible, a written conciliation agreement resolving the dispute between the complainant employee and the respondent employer shall be executed in lieu of referral of the matter to a hearing officer.

(2)

A conciliation agreement arising out of such conciliation shall be a written agreement between the respondent employer and the complainant employee.

(3)

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.

(4)

If conciliation fails, nothing said in the course of attempting conciliation under this article may be used as evidence in any subsequent proceeding under this article or otherwise without the written consent of the parties.

(5)

If the POD determines that the conciliation process has been refused or has reached impasse, the POD will notify the parties and schedule a hearing before the hearing officer.

(d)

*Hearing before hearing officer.*

(1)

Within 15 days after the POD gives notice that the conciliation process has been refused or has reached impasse, any party may submit a written request for a hearing before a hearing officer.

(2)

In conducting any hearing to determine whether a violation of this article has occurred, the hearing officer shall have the authority to administer oaths, issue subpoenas, compel the production of evidence and receive evidence. The hearing officer shall have the authority to consolidate two or more complaints into a single hearing where such complaints name the same respondent employer(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the hearing officer in wage theft matters is subject to appeal in a court of competent jurisdiction.

(3)

Pre-hearing matters.

a.

If a hearing officer is appointed, any party may request that a subpoena be issued by the hearing officer. Witnesses summoned by subpoena of the hearing officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Pinellas County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party at the time the subpoena is requested.

b.

Within ten days after service of a subpoena upon any person, such person may petition the hearing officer to revoke or modify the subpoena. The hearing officer 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 refusal to obey a subpoena, the hearing officer or any party may seek enforcement of a subpoena issued under the authority of this article by filing a petition for enforcement in the County Court of Pinellas County, Florida.

d.

In any enforcement proceedings authorized by this article, the court shall award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order, to the extent such award is authorized by the Florida Rules of Civil Procedure.

e.

Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

f.

The hearing officer 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.

g.

The hearing officer may rule on a motion to dismiss the complaint for failure to state a cause of action under this article.

h.

In any proceeding under this article, the burden of proof by a preponderance of the evidence rests upon the employee.

- i. In any hearing before the hearing officer pursuant to this section, the respondent employer 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, and otherwise be heard. Testimony taken at the hearing shall be under oath and either party may pay the cost to have a transcript made. The City may, at its discretion, utilize a court reporter or electronic recording device to create a verbatim record. If the City chooses to use an electronic device, either party may elect to pay a court reporter to attend the hearing.

(4)

Standards for resolving factual disputes.

Adequate records. When the following three conditions are met:

- a. 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
- b. Where such records are imprecise, inadequate or do not exist; and
- c. Where a complainant employee presents sufficient evidence to show, as a matter of reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done;

then the burden of persuasion falls on the respondent employer whose obligation it was to keep accurate records and the respondent employer must come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the complainant employee's evidence. If the respondent employer fails to meet this burden, the hearing officer may award damages based on the complainant employee's evidence.

(5)

Representation. Any person may be represented by counsel in any proceeding herein at that person's expense. Any party, including corporate entities, may authorize a non-lawyer advocate to appear on behalf of that party unless specifically disallowed by the hearing officer for good cause. The employee who asserts the claim must appear at the hearing in person.

(6)

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 article or by rules, regulations, or orders adopted pursuant to this article.
- b. All papers or pleadings required by this article to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(Ord. No. 161-H, § 1, 4-16-2015)

- **Sec. 15-44. - Enforcement of wage theft violations.**

(a)

At the conclusion of a hearing and upon a finding of no violation, the hearing officer shall issue a written order to that effect.

- (b) At the conclusion of a hearing and upon a finding of a wage theft violation, the hearing officer shall issue a written order that orders the employer within 45 days of the date of the order:
  - (1) To pay to the affected employee an amount equal to the amount of back wages that the respondent employer is found to have unlawfully failed to pay to the employee, liquidated damages, and reasonable attorney's fees and costs of pursuing the wage theft violation as determined by the hearing officer.
  - (2) To pay the City the administrative costs of processing the claim and all the costs of the hearing.
- (c) Joint and several liability. In any order issued by the hearing officer, the order may specify two or more respondent employers as jointly and severally liable for any amount payable to the complainant employee or the City or both; however, the total amount the complainant employee or the City may receive from jointly and severally liable respondent employers shall not exceed the total amount for which respondent employers are jointly and severally liable.
- (d) 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 an employee's complaint or the City'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 City'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.
- (e) Enforcement by private persons.
  - (1) If prior to filing a complaint under this article or during the pendency of such a complaint but prior to the issuance of a final decision by a hearing officer, a complainant employee brings a private action in his or her 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 employee's complaint filed with the City, or affirmatively or by consent opts to participate in any such litigation, that employee's complaint of wage theft shall be deemed withdrawn with respect to any employer named as a defendant in such court action.
  - (2) Within 15 days of becoming aware of any private action described herein, the POD shall notify the employee and any employer subject to the private action in writing of this provision and its effect on the complaint. Within 30 days of the issuance of such notice, the POD will dismiss the complaint, with prejudice, only with respect to the employer or employers who are named as a defendant to the private action. The City will notify the employee and any employer of such dismissal in writing.

(Ord. No. 161-H, § 1, 4-16-2015)

- **Sec. 15-45. - Retaliation prohibited.**

- (a) Employers are prohibited from threatening, intimidating, or taking other adverse action against employees in retaliation for asserting any claim to wages pursuant to this article, and any such actions are violations of this article. Adverse actions include, but are not limited to, communicating to the employee,

whether directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the employee is not lawfully in the United States.

(b)

Where such retaliation resulted in any loss of the employee's wages, upon a finding by a hearing officer that an employer retaliated against an employee in violation of this article, the employee is entitled to receive quantifiable wages and liquidated damages.

(c)

Violations of the retaliation prohibition shall be determined under the same procedures as wage theft complaints, and in the same proceeding as any related wage theft complaint. The City shall order any employer who has been found to have violated the retaliation prohibition to pay to the City the actual administrative processing costs and costs of the hearing, regardless of the findings on any related wage theft claim.

(Ord. No. 161-H, § 1, 4-16-2015)

- **Sec. 15-46. - Community engagement and proactive investigation.**

(a)

It is the policy of the City to engage community-based organizations to implement the purposes of this article. The POD may coordinate implementation of City-funded community outreach efforts, including developing appropriate guidelines or rules, and contracting with community-based organizations to provide such services. Contracted services may include, but are not limited to, educating employees on their rights and assisting employees who wish to file complaints.

(b)

The POD is authorized to direct proactive investigations of designated industries or employers in response to reports of alleged violations of this article from employees, residents, organizations, or employers.

(Ord. No. 161-H, § 1, 4-16-2015)