



OUR INSIGHTS

New Pinellas County Wage Theft Ordinance Goes Into Effect January 1

Author: Edmund J. McKenna (Tampa)

Published Date: December 10, 2015

The commissioners of Pinellas County recently adopted a wage theft ordinance that will become effective on January 1, 2016. The ordinance provides that if any employer fails to pay wages of at least \$60 due to an employee 14 days or more from the date the work was performed, the failure to pay will be deemed “wage theft.” However, if the employer has established a regular pay period longer than 14 days, the wages may be paid according to that schedule. “Employee” is defined as an individual “who performs work within the geographic boundaries of Pinellas County while being employed by an employer, but shall not include any bona fide independent contractor.”

Employees have one year to file a wage theft complaint with Pinellas County, and the county will serve the complaint and a written notice on the employer charged with wage theft. The county will “work with the parties in an attempt to conciliate a complaint.” Presumably, this must occur within 30 days because within that time period the county is required to appoint a special magistrate to hear wage theft matters. The special magistrate has the authority to administer oaths, issue subpoenas, compel the production of evidence, and receive evidence at a hearing. The final decision of the special magistrate in a wage theft matter is subject to appeal in a court of competent jurisdiction. The ordinance permits discovery upon motion of any party and proceeds in the manner provided by the Florida Rules of Civil Procedure. Upon the conclusion of the hearing, the special magistrate must issue an adjudicative final order and serve it on the parties. The order must set forth written findings of fact and conclusions of law.

The burden of proof with respect to adequate records falls on the employer that is alleged to have failed to keep accurate records. The employer must come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference drawn from the employee’s evidence. An employer fails to keep adequate records when the following three conditions are met: (1) where, by operation of some other statute or regulation, an employer has an obligation to keep records of an employee’s hours worked and/or records of compensation provided to an employee (such as under the federal Fair Labor Standards Act); (2) where such records are imprecise, inadequate, or do not exist; and (3) where an employee presents sufficient evidence to show, as a matter of just and reasonable inference, the amount of work done, the extent of work done, or what compensation is due for the work done. If the employer fails to meet this burden, the special

magistrate may award approximate damages based on the employee's evidence.

If the preponderance of the evidence demonstrates a wage theft violation, the special magistrate will order the employer to pay wage restitution to the employee in an amount equal to three times the amount of back wages that the employer is found to have unlawfully failed to pay the employee. This amount includes the back wages as compensation for the economic losses suffered because the employee did not receive his or her wage at the time it was due. The employer also must pay to the Board of County Commissioners an assessment of costs in an amount not to exceed the actual administrative processing costs and costs of the hearing.

The ordinance also prohibits retaliation against an employee who brings a wage theft claim. Violations of the retaliation prohibition are to be determined under the same procedures as wage theft complaints, and in the same proceeding as any related wage theft complaint. An employer that has been found to have violated the retaliation prohibition must pay to the county the actual administrative processing costs and costs of the hearing, regardless of the findings on any related wage theft claim. Where such retaliation results in any loss of the employee's wages, the employee is entitled to receive quantifiable damages resulting from the retaliation.

Finally, the ordinance does not supersede any other local wage theft ordinance (such as the recently enacted city of St. Petersburg wage theft ordinance). Thus, employers in Pinellas County may need to deal with multiple wage theft ordinances with differing requirements.

Edmund J. McKenna (Tampa)



Ed McKenna's practice primarily involves litigation, including Federal Rule 23 class actions, and advising employers how to avoid litigation. He has represented private/public employers in a variety of employment lawsuits -- including Title VII, ADEA, ADA, FMLA, FLSA, wrongful discharge, whistle blowing, and defamation -- before agencies and in state and federal courts. He has been involved in numerous employment class and collective action cases, including significant decisions involving...