



OUR INSIGHTS

Hillsborough County, Florida Passes Wage Theft Ordinance

Author: Edmund J. McKenna (Tampa)

Published Date: December 10, 2015

On October 21, 2015, the Hillsborough County Board of Commissioners enacted the “Hillsborough County Wage Recovery Ordinance.” By its terms, the ordinance applies to all employers within Hillsborough County and any company with an employee or independent contractor who performs work within Hillsborough County. The ordinance also applies to “third-party labor providers,” although the Board left this term undefined.

A violation of the ordinance occurs if an employer does not pay an employee for work performed within a “reasonable time”—presumed to be within 14 calendar days from the date on which the work is performed (unless the employer has established regularly recurring pay periods)—and the amount to be paid exceeds \$60.

The Thirteenth Judicial Circuit Mediation and Diversion Services Program will process alleged violations. The program will make the final determination as to whether a claimant has a bona fide claim for unpaid wages and, if they find that such a claim exists, will initiate counseling and mediation efforts. If the determination by the program is that mediation has been unsuccessful and further efforts on the program’s part will not be productive, the employee or independent contractor will be referred to a local, nonprofit legal aid agency for further representation. The agency has not been named yet, but it will likely be Bay Area Legal Services, Inc.—a nonprofit, public interest agency that already provides civil legal assistance to low-income individuals in Hillsborough County.

If the nonprofit agency determines that there are grounds to believe that an employee or independent contractor has a valid wage dispute and finds that settlement efforts have been unsuccessful, it may schedule an administrative hearing. The county will appoint the hearing officer who “shall serve as a volunteer with no pay.” If, however, after due effort, adequate volunteer services cannot be retained, the county may employ one or more qualified persons as the hearing officer on an as-needed basis.

Discovery is permitted under the Florida Rules of Civil Procedure, but the rules of evidence do not apply and any evidence of a type “commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible.” A non-lawyer may represent corporate entities.

The initial burden is on the claimant to present sufficient evidence to raise a reasonable inference about the hours or amount of work performed, rate of pay, and the amount due. The burden of proof will then shift to the employer to present evidence to refute the employee’s inference. To refute this inference, the employer must

present accurate employment records of the claimant's work that the employer possesses or is obligated by federal, state, or local law or regulation to possess. This includes producing records of hours worked, rates of pay, and compensation paid. The hearing officer may consider the employer's failure to keep and present accurate records in making his or her final determination.

If the claimant prevails, the hearing officer may award double damages and require the employer to pay the county's costs for the administrative process. If the hearing officer finds that the claimant brought the claim in bad faith, the hearing officer may issue an order assessing the county's costs for the administrative process against the claimant. Any party may appeal the hearing officer's order to the circuit court within 30 days of the decision.

Any claimant subjected to retaliatory conduct by an employer for his or her actions under this ordinance may pursue a court action in state or federal court against the employer for violating any state or federal employment or whistleblower law.

The ordinance will apply throughout the incorporated and unincorporated areas of Hillsborough County unless a municipality decides to opt out of this ordinance's provisions or enact its own ordinance concerning this matter. The ordinance will take effect upon filing with the Florida Department of State.

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...

© 2015, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.