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ORDINANCE NO. 2012-32

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, CREATING CHAPTER 20½ OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO PROHIBIT NON-PAYMENT OF EARNED WAGES; PROVIDING FOR AN ADMINISTRATIVE COMPLAINT, ADMINISTRATIVE HEARING AND ADMINISTRATIVE PROCEDURES FOR NON-PAYMENT OF EARNED WAGES CLAIMS; PROVIDING FOR ENFORCEMENT OF ADMINISTRATIVE ORDERS IN A COURT OF COMPETENT JURISDICTION; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Vice-Mayor Kristin Jacobs)

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

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

Section 1. Chapter 20½ of the Broward County Code of Ordinances is hereby created to read as follows:

[UNDERLINING OMITTED]

Chapter 20½. Non-Payment of Earned Wages.

Sec. 20½-1. Declaration of Policy.

It is hereby declared to be the policy of Broward County in the exercise of its police power for the public safety, health, and general welfare, to prevent the non-payment of wages earned within Broward County. Eliminating the underpayment or nonpayment of wages earned by persons working in the County serves the public by promoting economic security and dignity for those working in the County; by promoting

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

5 **Sec. 20¹/₂-2. Definitions.** For purposes of this chapter:

6 (a) *Employ.* The meaning of "employ," including as used in the terms
7 employing or employment, shall include to suffer or permit to work.

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

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

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

15 (2) The State of Florida; or

16 (3) Any Indian Tribe.

17 (d) *Independent contractor* shall have the same meaning as in the Internal
18 Revenue Code and implementing federal regulations.

19 (e) *Liquidated damages* shall mean an amount equal to the amount of earned
20 wages a respondent employer is found to have failed to pay the complainant employee.
21 Where an employee is awarded damages for a non-payment of earned wages violation,
22 the damages are comprised of such liquidated damages awarded in addition to back
23 wages in order to compensate for the economic losses suffered by reason of the
24 employee not receiving his or her wage at the time it was due.

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underscored type are additions.

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

6 (g) *Threshold amount* shall mean sixty dollars (\$60.00).

7 (h) *Wage rate* shall mean any form of monetary compensation which the
8 employee, in connection with work performed within the geographic boundaries of
9 Broward County, agreed to accept in exchange for performing work for the employer,
10 whether daily, hourly, or by the piece, but in all cases shall be equal to no less than the
11 highest applicable minimum wage rate established by operation of any federal, state, or
12 local law.

13 **Sec. 20¹/₂-3. Non-Payment of Earned Wages Violations.** The non-payment of
14 earned wages occurs when an employer fails to pay any portion of wages due to an
15 employee, according to the wage rate applicable to that employee, within a reasonable
16 time from the date on which that employee performed the work for which those wages
17 were compensation. Subject to the terms and conditions stated in this chapter, such
18 violation shall entitle an employee, upon a finding by a Hearing Officer appointed by
19 Broward County that an employer has failed to pay earned wages, to receive back
20 wages in addition to liquidated damages from that employer. However, notwithstanding
21 anything to the contrary that may appear in this chapter, if the employer proves by a
22 preponderance of the evidence that the act or omission giving rise to a non-payment of
23 earned wages action was in good faith and that the employer had reasonable grounds
24 for believing that the non-payment was not a violation of this chapter, the Hearing

1 Officer may, in his or her sole discretion, award no liquidated damages or award
2 liquidated damages in a lower amount than would be awardable absent such
3 demonstration by the employer.

4 **Sec. 20¹/₂-4. Procedures for Non-Payment of Earned Wages Claims.**

5 (a) *Filing non-payment of earned wages complaints.*

6 (1) Complaints alleging non-payment of earned wages may be considered
7 under this chapter only if the following conditions are met:

8 a. The employee alleges a non-payment of earned wages violation
9 equal to or exceeding the threshold amount;

10 b. The employee notifies the employer in writing, within sixty (60) days
11 after wages were due to be paid but were not paid, that the
12 employer has not paid all wages earned by the employee. The
13 notice must identify all wages to which the employee claims
14 entitlement, the actual or estimated work dates and hours for which
15 payment is sought, and the total amount of alleged unpaid wages
16 through the date of the notice;

17 c. The employee files, concurrently with the complaint, a true copy of
18 the notice required by paragraph (b) immediately above; and

19 d. The employee alleges in the complaint that the employer did not
20 pay all earned but unpaid wages specified in the written notice, or
21 otherwise resolve the claim to the satisfaction of the employee,
22 within fifteen (15) days after the employer received the written
23 notice or prior to the filing of the complaint, whichever is later.
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1 (2) Either of the following may file a written, signed complaint with the County
2 pursuant to the procedures established by the County Administrator by
3 Administrative Rule:

4 a. An employee aggrieved by a non-payment of earned wages action
5 prohibited by this chapter; or

6 b. Any entity a member of which is an employee aggrieved by a non-
7 payment of earned wages violation of this chapter.

8 (3) A signed complaint for non-payment of earned wages must be filed with
9 the County in the manner prescribed by Administrative Rule no later than
10 one (1) year after the last date upon which the complainant employee
11 performed the work for a respondent employer with regard to which the
12 employee alleges a violation of this chapter has occurred. If the alleged
13 non-payment of earned wages violation is ongoing at the time of the filing
14 of the complaint, the complaint may also seek recovery of amounts that
15 accrue after the filing of the complaint. With regard to amounts that were
16 due at the time the complaint was filed, an aggrieved employee may
17 recover only those amounts that were specified in the notice required by
18 section 20½-4 above that became due and payable within the one (1) year
19 period prior to the date the complaint was filed.

20 (4) The complaint shall set forth the facts upon which it is based with sufficient
21 specificity to identify the respondent employer(s) and for the County to
22 determine both that an allegation of non-payment of earned wages has
23 been made and that the other criteria stated in this chapter have been
24 met.

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1 (5) In addition to the other requirements of the complaint stated in this
2 chapter, the complaint shall be sworn and shall include or attach the
3 following information and any additional information required by
4 Administrative Rule:

5 a. The employee's name, address, and telephone number (or
6 alternate telephone number if the employee does not have a
7 telephone);

8 b. The employer's name, business address, and telephone number;

9 c. An explanation of the alleged violation(s) including, but not limited
10 to, the date(s) the violation(s) occurred, the total dollar amount of
11 unpaid wages, and an explanation of how the total amount of
12 unpaid wages was calculated; and

13 d. Supporting documentation, such as copies of all demand letters
14 sent by the employee to the employer; copies of employee
15 paychecks and check stubs; copies of any agreements relating to
16 payment of the employee's wages; the names and contact
17 information of any other persons who can substantiate the
18 allegations of the complaint; copies of the employee's work
19 schedule, timesheets and W-2 forms; and any other records
20 maintained by the employee of time worked or wages paid.

21 (b) *Respondent.*

22 (1) Upon the filing of any complaint, the County shall promptly determine
23 whether the complaint meets the criteria established by this chapter. The
24 duty of the County in determining whether a complaint meets those criteria

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1 is limited to receiving the complaint and comparing the information
2 provided therein to the criteria required herein. This determination is a
3 ministerial act and may not be based on further investigation or the
4 exercise of independent judgment.

5 (2) Upon making such determination, the County shall serve the complaint
6 and a written notice on each respondent charged with the non-payment of
7 earned wages, setting forth the allegations, rights, and obligations of the
8 parties, including, but not limited to, the right to a due process hearing on
9 the matter before a Hearing Officer and that the respondent may be
10 responsible for the costs of the Hearing Officer and other enforcement
11 costs. Such service shall be made in the same manner as service of a
12 civil complaint under the Florida Rules of Civil Procedure.

13 (3) Each respondent shall file an answer to the complaint with the County not
14 later than twenty (20) days after receipt of the complaint and the written
15 notice referenced above.

16 (c) *Hearing before Hearing Officer.*

17 (1) Within thirty (30) days after the service of the Complaint on the
18 respondent, or within ten (10) days after the County determines that any
19 conciliation efforts (as referenced below) will not result in resolution of the
20 dispute, whichever is later, the County shall appoint a Hearing Officer that
21 it deems to be qualified to hear non-payment of earned wages matters.
22 The Hearing Officer shall be a member of the Florida Bar, in good
23 standing, for at least the five (5) years preceding service as a Hearing
24 Officer. In conducting any hearing to determine whether a violation of this

1 chapter has occurred, the Hearing Officer shall have the authority to
2 administer oaths, issue subpoenas, compel the production of evidence,
3 and receive evidence. The Hearing Officer shall have the authority to
4 consolidate two (2) or more complaints into a single hearing where such
5 complaints name the same respondent(s) and involve sufficiently similar
6 allegations of fact to justify consolidation.

7 (2) All parties shall appear at the hearing in person, with or without counsel,
8 and may submit evidence, cross-examine witnesses, obtain issuance of
9 subpoenas, and otherwise be heard. Testimony taken at the hearing shall
10 be under oath, and a transcript shall be made available at cost to any
11 interested party.

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

14 (4) The Hearing Officer may direct that the parties submit a pre-hearing
15 statement addressing the issues of law and fact that will be involved in
16 such hearing, identifying the witnesses that will testify, and providing a list
17 of all documents or other types of exhibits that will be submitted.

18 (5) Upon the conclusion of the hearing, an adjudicative final order shall be
19 issued and served upon the parties setting forth written findings of fact and
20 conclusions of law. The Hearing Officer's ruling shall be considered a final
21 administrative ruling, enforceable in a court of competent jurisdiction, and
22 reviewable as provided by applicable law.

1 (6) Subject to paragraph (7) immediately below, in any proceeding under this
2 chapter, the burden of proof by a preponderance of the evidence rests
3 upon the complainant.

4 (7) When the following three (3) conditions are met:

5 a. By operation of some other statute or regulation, a respondent
6 employer has an obligation to keep records of an employee's hours
7 worked and/or records of compensation provided to an employee;

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

9 c. A complainant employee presents sufficient evidence to show, as a
10 matter of just and reasonable inference, the amount of work done
11 or the extent of work done or what compensation is due for the
12 work done;

13 then the burden of imprecision falls on the respondent whose obligation it
14 was to keep accurate records, and the respondent must come forward
15 with evidence of the precise amount of work performed or with evidence to
16 negate the reasonableness of the inference to be drawn from the
17 complainant's evidence. If the respondent fails to meet this burden, the
18 Hearing Officer may award approximate damages based on the
19 complainant's evidence.

20 (d) *Subpoenas.*

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

3 (2) Within ten (10) days after service of a subpoena upon any person, such
4 person may petition the Hearing Officer to revoke or modify the subpoena.
5 The Hearing Officer shall grant the petition if he or she finds that the
6 subpoena requires appearance or attendance at an unreasonable time or
7 place, that it requires production of evidence which does not relate to the
8 matter, that it does not describe with sufficient particularity the evidence to
9 be produced, that compliance would be unduly onerous, or for other good
10 reason.

11 (3) In the case of refusal to obey a subpoena, the Hearing Officer or any party
12 may seek enforcement of a subpoena issued under the authority of this
13 chapter by filing a petition for enforcement in a court of competent
14 jurisdiction. In such enforcement proceeding, the court may award to the
15 party prevailing in the enforcement proceeding all or part of the costs and
16 attorney's fees incurred in obtaining the enforcement order.

17 (4) Any person who willfully fails or neglects to attend and testify or to answer
18 any lawful inquiry or to produce records, documents, or other evidence, if
19 in his or her power to do so, may be fined by a court of competent
20 jurisdiction not more than five hundred dollars (\$500.00) or imprisoned not
21 more than sixty (60) days or both.

22 (5) Any person who makes or causes to be made any false entry or false
23 statement of fact in any report, account, record, or other document
24 submitted to the Hearing Officer pursuant to its subpoena or other order,

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1 or who willfully mutilates, alters, or by any other means falsifies any
2 documentary evidence, may be fined by a court of competent jurisdiction
3 not more than five hundred dollars (\$500.00) or imprisoned not more than
4 sixty (60) days or both.

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

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

9 (2) All pleadings must be filed and served in the manner provided for by the
10 Florida Rules of Civil Procedure. All other papers required by this chapter
11 to be served must be served by certified mail.

12 (f) *Conciliation.*

13 (1) It is the policy of the County to encourage conciliation of complaints. The
14 County will work with the parties in an attempt to conciliate. If possible, a
15 written conciliation agreement resolving the dispute shall be executed
16 prior to the referral of the matter to a Hearing Officer.

17 (2) Any conciliation agreement shall be between the respondent and the
18 complainant.

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

1 (4) Except with regard to actions to enforce a fully-executed conciliation
2 agreement, nothing said or done in the course of attempting conciliation
3 under this chapter may be used as evidence in any subsequent
4 proceeding under this chapter or otherwise without the written consent of
5 the parties to the underlying complaint.

6 (g) *Representation by Non-lawyer Advocate.* Any person may be represented
7 by counsel in any proceeding under this chapter. Any party, including corporate
8 entities, as an alternative to counsel, may be represented by a non-lawyer advocate
9 authorized by that party, except where such representation is prohibited by law or
10 disallowed by the Hearing Officer for good cause.

11 (h) *Enforcement by private persons or by the State of Florida.*

12 (1) *Enforcement by private persons.* If during the pendency of a non-payment
13 of earned wages violation complaint but prior to the issuance of a final
14 decision by a Hearing Officer, a complainant employee brings a private
15 action in his or her own right, whether under state law, federal law, or
16 both, in any state or federal court to seek unpaid wages based upon the
17 same facts and allegations as the complainant employee's complaint to
18 the County, or affirmatively or by consent opts to participate in any such
19 litigation, that complainant employee's administrative complaint of non-
20 payment of earned wages shall be deemed withdrawn with respect to any
21 respondent employer named as a defendant in such court action. This
22 section shall be interpreted narrowly so as to leave unaffected any
23 cumulative rights which were not the subject of a complainant employee's
24 complaint.

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1 (2) *Enforcement by the State of Florida.* If at any time during the pendency of
2 a complaint of non-payment of earned wages, the Hearing Officer
3 becomes aware of an enforcement action by the Florida Attorney General
4 or other body of the State of Florida based on wage violations involving
5 the same facts as the complainant employee's complaint to the County,
6 the Hearing Officer shall dismiss, without prejudice, the complainant
7 employee's administrative complaint with respect to the respondent or
8 respondents named in such State enforcement action.

9 **Sec. 20 $\frac{1}{2}$ -5. Enforcement of Non-Payment of Earned Wages Violations.**

10 (a) *Order Issued.* At the conclusion of a hearing, the Hearing Officer shall
11 issue a final written order stating whether the non-payment of earned wages violation
12 has been established by a preponderance of the evidence. If such violation has been
13 so established, the final written order shall:

14 (1) Require the employer to pay wage restitution to the affected employee in
15 an amount equal to twice the amount of back wages that the respondent
16 employer is found to have unlawfully failed to pay the complainant
17 employee; this amount shall include the back wages in addition to
18 liquidated damages as compensation for the economic losses suffered by
19 reason of the employee not receiving his or her wage at the time it was
20 due;

21 (2) Require the employer to reimburse the employee for any reasonable costs
22 and attorney's fees incurred by the employee in connection with the
23 administrative hearing; and
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1 (3) Require the employer to pay to the Board of County Commissioners an
2 assessment of costs in an amount not to exceed actual administrative
3 processing costs and the cost of the hearing.

4 (b) *Failure to Comply with Order.* If any respondent employer fails to comply
5 with the Hearing Officer's final written order within thirty (30) days after issuance of the
6 order, interest shall accrue on all amounts due and owing the employee and the County
7 with interest commencing as of the date of the order. Such interest shall accrue at the
8 applicable rate for court judgments in Florida. Additionally, the employee, or the County
9 with regard to any amount owed to the County, may file an appropriate action in a court
10 of competent jurisdiction to enforce compliance with the order. If the employee or the
11 County files and prevails in such action, the employee (or the County, as applicable)
12 shall be entitled to recover its reasonable court costs and attorney's fees from the
13 employer.

14 (c) *Cumulative Rights Preserved.* Nothing in this chapter shall be construed
15 to limit, preclude, or in any way abrogate the cumulative rights or remedies available to
16 employees at common law or by statute including, but not limited to, rights related to the
17 violation of overtime, minimum wage, living wage, prevailing wage, or equal-pay laws.

18 **Sec. 20¹/₂-6. Penalty for Filing a Frivolous Complaint.** If a Hearing Officer
19 determines that any non-payment of earned wages complaint submitted to the County
20 was without any basis in law or fact, the Hearing Officer shall issue an order requiring
21 the complainant, or the entity filing the complaint on behalf of its member, where
22 applicable, to reimburse, within thirty (30) days of the order: (1) the County for all
23 administrative costs incurred by the County in connection with such complaint; and (2)
24 each respondent employer named in the complaint for all reasonable costs and

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1 attorney's fees incurred by the employer in connection with the complaint. If such
2 reimbursement is not timely made, the County or the employer may file an appropriate
3 action in a court of competent jurisdiction to obtain such reimbursement.

4 **Section 20¹/₂-7. Required Notice by Employers.** All employers that maintain
5 an office within Broward County and employ individuals to perform work within Broward
6 County, shall post notice of the administrative claim created by this Ordinance in the
7 location and form required under any applicable Administrative Rule.

8 **Sec. 20¹/₂-8. Reporting.** A fiscal report regarding the administrative costs
9 associated with the implementation of this Ordinance shall be created by the head of
10 the office or division that oversees or administers the process created by this
11 Ordinance, and shall be submitted to the County Administrator within six (6) months
12 after this Ordinance's effective date and one (1) year after its effective date. Thereafter,
13 such fiscal report shall be submitted annually. The fiscal report should provide quarterly
14 statistical data about the number of inquiries, number of petitions for hearings, number
15 of hearings scheduled, the costs of the hearings, and the results of the hearings.

16 **Sec. 20¹/₂-9. Sunset Review.**

17 This Chapter shall, subject to a sunset review by the Board of County
18 Commissioners, stand repealed five (5) years after its effective date.

19 Section 2. SEVERABILITY.

20 If any portion of this Ordinance is determined by any Court to be invalid, the
21 invalid portion shall be stricken, and such striking shall not affect the validity of the
22 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
23 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
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1 or circumstance(s), such determination shall not affect the applicability hereof to any
2 other individual, group, entity, property, or circumstance.

3 Section 3. INCLUSION IN CODE.

4 It is the intention of the Board of County Commissioners that the provisions of
5 this Ordinance shall become and be made a part of the Broward County Code, and that
6 the sections of this Ordinance may be renumbered or relettered and the word
7 "ordinance" may be changed to "section," "article," or such other appropriate word or
8 phrase in order to accomplish such intentions.

9 Section 4. EFFECTIVE DATE.

10 This Ordinance shall become effective on January 2, 2013.

11 ENACTED October 23, 2012

12 FILED WITH THE DEPARTMENT OF STATE October 31, 2012

13 EFFECTIVE January 2, 2013

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