

By the Committee on Judiciary; and Senator Simpson

590-03145-14

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1 A bill to be entitled
2 An act relating to local regulation of wage theft;
3 creating s. 448.111, F.S.; defining terms; requiring a
4 county that decides to create a local solution to wage
5 theft to adopt one of two processes and specifying the
6 requirements of those processes; providing an
7 exception for an ordinance enacted by a specified
8 date; providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 448.111, Florida Statutes, is created to
13 read:

14 448.111 Local regulation of wage theft.-

15 (1) DEFINITIONS.-As used in this section, the term:

16 (a) "Legal services organization" means an organization
17 that provides free or low-cost legal services to qualified
18 persons and meets the minimum standards established by The
19 Florida Bar for providing such services, including a legal
20 practice clinic operated by an accredited Florida law school.

21 (b) "Wage theft" means an illegal or improper underpayment
22 or nonpayment of an individual employee's wage, salary,
23 commission, or other similar form of compensation within a
24 reasonable time after the date on which the employee performed
25 the work to be compensated. A wage theft occurs when an employer
26 fails to pay a portion of the wages, salary, commissions, or
27 other similar forms of compensation due to an employee within a
28 reasonable time after the date on which the employee performed
29 the work, according to the current applicable rate and the pay

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30 schedule of the employer established by policy or practice.

31 (2) LOCAL ORDINANCES.—Upon the determination by a county
32 that a local solution to wage theft is necessary, the county
33 shall adopt a local ordinance that includes one of the following
34 processes:

35 (a) Legal services organization process.—The county may
36 partner with a local legal services organization for the purpose
37 of establishing a local process through which claims of wage
38 theft shall be addressed by the legal services organization. The
39 county may partner with a legal services organization located in
40 that county or in an adjoining county.

41 1. An individual who has experienced wage theft may contact
42 the legal services organization for assistance in recovering
43 wages. The legal services organization shall determine whether
44 the individual has a bona fide claim for unpaid wages.

45 2. The legal services organization shall notify the
46 employer and provide the employer with an opportunity to resolve
47 the matter of unpaid wages in the manner deemed most appropriate
48 to each claim. The notification may occur by telephone, written
49 correspondence, or any other means deemed appropriate by the
50 legal services organization.

51 3. The legal services organization shall work with the
52 employee and employer to resolve the issue informally but
53 expeditiously. The informal resolution may include obtaining
54 attorney fees and costs from the employer.

55 4. The legal services organization shall file court actions
56 as appropriate and refer unresolved claims to local pro bono or
57 other counsel for resolution.

58 5. The county shall establish a reporting mechanism through

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59 which the county receives regular reports regarding the legal
60 services organization's work on cases of wage theft. The county
61 may require periodic reports.

62 (b) Administrative process.—The county may establish an
63 administrative process that gives the parties involved the
64 opportunity to negotiate a resolution with regard to the wages
65 in question.

66 1. The county shall establish a system that provides for:

67 a. A complaint process by which a complaint, which must
68 allege a wage theft violation, may be submitted to the county by
69 or on behalf of an aggrieved employee; and

70 b. Service of the complaint and written notice on the
71 respondent employer alleged to have committed a wage theft
72 violation, which sets forth the allegations made in the
73 complaint and the rights and obligations of the parties. Such
74 rights and obligations shall include the right of the respondent
75 to file an answer to the complaint and the rights of both
76 parties to a conciliation process and to a hearing on the matter
77 before a county hearing officer. The hearing officer must have
78 either a legal background or specialized training in the subject
79 matter. The final determination of a hearing officer is subject
80 to appeal to a court of competent jurisdiction.

81 2. The system established must encourage the parties to
82 conciliate the charges and resolve the matter. A hearing officer
83 may not be appointed unless the matter is not resolved using the
84 process established in this paragraph.

85 3. If a preponderance of the evidence demonstrates a wage
86 theft violation, the hearing officer shall order the employer to
87 pay wage theft restitution to the affected employee along with

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88 liquidated damages and any administrative costs.

89 4. The regulation of wage theft through local ordinance
90 shall be limited to requiring that employers pay their employees
91 for work performed at the agreed upon rate of pay plus any
92 penalties as set forth herein and establishing a fair procedure
93 and program to review and enforce wage agreements.

94 5. Any wage recovery system established pursuant to this
95 paragraph must provide that an employee who is not timely paid
96 wages, final compensation, or wage supplements by his or her
97 employer as required is entitled to recover through a claim
98 filed in a process or program established under this paragraph
99 in the employee's county of employment or in a civil action, but
100 not both.

101 6. The county shall establish a reporting mechanism through
102 which the county receives regular reports regarding cases of
103 wage theft. The county may require periodic reports.

104 7.a. Upon a finding of wage theft, the employer shall be
105 liable for the actual back wages due and owing and may be liable
106 for administrative costs in an amount not to exceed \$1,500. If
107 the employer is found to have acted in good faith or if the
108 hearing officer has reason to believe that the act or omission
109 was not intentional or was not wage theft, the administrative
110 costs against the employer may be waived. In addition,
111 liquidated damages shall be awarded to the employee but are
112 limited to twice the amount a respondent employer is found to
113 have unlawfully failed to pay the complainant employee.

114 b. In addition to the actual back wages due and liquidated
115 damages, an employer found to have committed a second violation
116 shall be fined \$1,000 and an employer found to have committed a

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117 third and subsequent violation shall be fined \$2,000. An
118 employer who commits a second or subsequent violation may be
119 liable for administrative costs in an amount not to exceed
120 \$2,500.

121 8. Any claim brought under this paragraph is subject to a
122 statute of limitations of 1 year from the last date upon which
123 wages were due to the employee for the wage theft incident that
124 is the subject of the wage theft claim.

125 (3) FUNDING.—The county may dedicate county funds to assist
126 the legal services organization process or the administrative
127 process under subsection (2) in addressing claims of wage theft.

128 (4) CURRENT ORDINANCES.—A local ordinance governing wage
129 theft which was enacted on or before January 1, 2014, is not
130 preempted by this section.

131 Section 2. This act shall take effect upon becoming a law.