



## **Florida - Miami-Dade County: Wage Theft Ordinance – Effective 03.01.10**

April 13, 2010

Dear Client:

Miami-Dade County in Florida adopted a Wage Theft Ordinance effective on 03.01.10. The ordinance applies to all private employers with employees working in Miami-Dade County, Florida, regardless of the physical location of the employer. Employers that pay their employees other than weekly may unknowingly violate this new ordinance. Since 2005, the Southern District of Florida (the federal trial court with jurisdiction over Miami-Dade County) has had a disproportionately high number of Fair Labor Standards Act (FLSA) cases filed regarding wage theft. The Wage Theft Ordinance was enacted in an effort to curb the high number of FLSA claims and provide further protections for employees.

Although this ordinance is specific to Miami-Dade County in Florida, all employers should remember that nearly every state requires timely payment of wages. States and counties that do not have a similar ordinance in place may soon follow this standard.

### **Highlights of the Ordinance**

- **Wage theft is prohibited.** According to the Ordinance, a *wage theft* violation occurs when an employer fails to pay any portion of the wages due to an employee (of at least \$60), according to the *wage rate* applicable to the employee, *within a reasonable time* from the date on which that employee performed the work for which the wages are compensation.
- **Wages must be paid according to the legal wage rate.** *Wage rate* is defined by the Ordinance as "any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether daily, hourly, or by piece." Note: This provides a higher level interpretation than the regular (wage) rate under the FLSA.
- **Payment required within a reasonable time frame.** *Reasonable time* is defined by the Ordinance as "no later than 14 calendar days from the date the work was performed." However, this time may be modified to no longer than 30 days when a specific written agreement\* has been signed and dated by the employee.

### **Impact on Employers**

- **Harsh Penalties/Fines.** Employers found to have violated this ordinance will be required to pay up to *three times* the amount of wages that were not timely paid to the employee, along with court costs which are estimated to be an additional \$3,500.

### **Best Practices Recommendations**

1. **Properly classify your employees.** A stringent review of employees currently classified as exempt or as independent contractors is recommended to ensure complete compliance with the FLSA. For employers in Miami-Dade County now, any misclassification of an employee as exempt vs. an independent contractor may lead to a finding that the employer has committed wage theft.

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#### SCI Operations Centers

Corporate Office – Atlanta • 2435 Tech Center Parkway, Lawrenceville, GA 30043 • 800.444.6211  
Anchorage • 4241 B Street, Suite 200, Anchorage, AK 99503 • 907.337.2425 Chicago • 1420 Kensington Road, Suite 114, Oak Brook, IL 60523 • 800.750.1932  
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2. **Review your time keeping policies.** Make sure that accurate time records are being kept and that all time worked by employees is being recorded. In light of this new ordinance, it would be wise to require both exempt *and* non-exempt employees to record time worked. Without accurate records, any employee determined to be improperly classified as exempt, can estimate the time worked. A hearing officer will base the wage calculation on that estimated time. The employer will have the burden of proving actual time worked.
3. **Review your pay schedules.** SCI advises that any employer who now pays on a semi-monthly or monthly basis review their pay schedule and create a pay frequency of no less than bi-weekly payments.
4. **Put paycheck schedules in writing. Have all Members sign and date the “Miami-Dade County Pay Agreement and Acknowledgement.”** Doing so helps to defend employers from unfounded wage theft claims. The completed document\* should be returned to your assigned SCI Professional.
5. **Use *one of these two* payment options.**
  - **Promptly pay your employees for all work performed.** If you pay your employees more than 14 days after the first day of the pay period (e.g., semi-monthly or monthly) change the schedule to a weekly or bi-weekly pay frequency.
  - **Have all Members sign and date the “Miami-Dade County Pay Agreement and Acknowledgement.”** If you opt to keep a pay schedule that is longer than bi-weekly, the completed document\* should be returned to your assigned SCI Professional. This option allows employers to lengthen the time they have to pay wages (but not to exceed 30 days).

#### **Additional Support from SCI and Resources**

Our Service Professionals and SCI's resources can provide ongoing assistance to you in gaining a better understanding of this ordinance as well as implementing our *Best Practices* recommendations. You can always count on SCI to help avoid the added time and cost associated in managing your workplace concerns.

Access this MiamiDade.gov website for further information:

- [www.miamidade.gov/govaction/matter.asp?matter=093228&file=true&yearFolder=Y2009](http://www.miamidade.gov/govaction/matter.asp?matter=093228&file=true&yearFolder=Y2009)

All content in this notice is based on current information and supersedes previous communications regarding this topic. If you have any questions or concerns, please contact your assigned SCI Professional.

Sincerely,

SCI Companies

\* Attachment: "Miami-Dade County Pay Agreement and Acknowledgement"