

## LIVING WAGE ORDINANCE 2008-45

### COMPLAINT PROCEDURE

1. A covered employee or subcontractor of a service contractor who believes that its employer or responsible service contractor has violated the requirements of Ordinance 2008-45 ("Living Wage Ordinance", as amended) must first contact their supervisor or the responsible service contractor. If the matter is not resolved, the covered employee or subcontractor of a service contractor should contact Broward County's Office of Intergovernmental Affairs and Professional Standards who will in turn contact the Purchasing Division to obtain the contact information for the Broward County Contract Administrator responsible for the service contract under which the employee or subcontractor of a service contractor is classified. The Office of Intergovernmental Affairs and Professional Standards Section's Specialist will confirm the name and phone number of the Contract Administrator and relay the information back to the employee or subcontractor of a service contractor to file an initial complaint. The initial complaint to the Contract Administrator may be made either verbally or in writing. The complaint procedure may be pursued up to two (2) years from the alleged date of the violation. A violation that occurred more than two (2) years prior to the date of the complaint shall not be subject to these procedures.
2. If the Contract Administrator does not resolve the complaint satisfactorily, the covered employee or subcontractor of a service contractor who believes that the employer or the responsible service contractor has violated the requirements of the Living Wage Ordinance may file a written complaint with the Office of Intergovernmental Affairs and Professional Standards, 115 South Andrews Avenue, Room 426, Fort Lauderdale, FL 33301.
3. The written complaint must be hand written or typed legibly using Broward County's Living Wage Complaint Form and must specify the following:
  - the date the covered employee or subcontractor of a service contractor began work for the employer or the responsible service contractor (on or after October 1, 2003),
  - the type of contract the covered employee or subcontractor of a service contractor is currently working or previously worked under,
  - the covered employee's or subcontractor of a service contractor's work location [name and address of building(s)],
  - the covered employee's or subcontractor of a service contractor's pay rate, pay schedule and method of payment (check, cash, etc.), and hourly pay rate,
  - indicate if the employee or subcontractor of a service contractor was covered by health insurance and,
  - the specific language of Living Wage Ordinance which the employee or subcontractor of a service contractor believes was violated.

The Living Wage Complaint Form can be found on the Office of Intergovernmental Affairs and Professional Standards' webpage at <http://www.broward.org/Intergovernmental> or by contacting the Office of Intergovernmental Affairs and Professional Standards Section directly at (954) 357-6500.

## LIVING WAGE ORDINANCE 2008-45

### COMPLAINT PROCEDURE

4. The investigation will be completed within 60 days from the time the written complaint is received by the Professional Standards Specialist, unless it is determined by the Director of the Office of Intergovernmental Affairs and Professional Standards that additional time is necessary to determine the facts leading up to the complaint. Upon completion of fact-finding, the Professional Standards Specialist will produce a written determination containing findings, conclusions, and remedies, if any. A copy of this determination will go to the Contract Administrator, the Purchasing Director, the complainant and to the employer or the responsible service contractor (or its representative). If there is a determination that a violation exists, a copy of the determination will also be provided to the County Administrator and County Attorney.
5. If the complainant disagrees with the determination, the complainant has the right to request, within ten (10) calendar days, an administrative hearing before a Hearing Officer. The appeal for a hearing before the Hearing Officer must be in writing, filed with the Office of Intergovernmental Affairs and Professional Standards. It must identify the particular findings, conclusions and/or remedies challenged, and the facts and arguments in support of the challenge.
6. Upon receipt of the written notice of appeal, the Professional Standards Specialist will schedule a hearing before a Hearing Officer, at which time the appealing party will be given the opportunity to demonstrate why the decision of the Professional Standards Specialist should be overturned.
7. Hearing Procedure. The procedure for any hearing required by this article will be:
  - a. The Professional Standards Specialist will cause to be served upon the person a notice of hearing, stating the time and place of the hearing. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the employer or responsible service contractor (or its representative).
  - b. The parties shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination, and to impeach any witness regardless of which party first called the witness to testify.
  - c. In any hearing before a Hearing Officer, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida.
  - d. The Hearing Officer shall be able to compel the attendance of witnesses, if requested by a party, by issuance of an administrative subpoena served by certified mail or by any other process and service authorized by law. The Hearing Officer will determine whether procedural due process has been afforded, whether essential requirements of law have been observed, whether the findings are arbitrary, capricious, an abuse of discretion, in accordance with the law or unsupported by substantial evidence as a whole. Substantial evidence means such relevant evidence as a reasonable mind might accept adequate to support a conclusion. When all parties are

## LIVING WAGE ORDINANCE 2008-45

### COMPLAINT PROCEDURE

represented by counsel, upon a written motion made at least ten (10) days prior to when a hearing is scheduled, the Hearing Officer may allow local depositions of the parties who have personal knowledge of the appeal and who will be unavailable to testify at the hearing. The Hearing Officer may grant the motion of any person having standing under Florida law to intervene in the proceedings. The Hearing Officer must rule upon any preliminary motions or motions to intervene before the commencement of a hearing held under this procedure. Such motions will be made at least ten (10) days prior to the date the hearing is scheduled. The motions may be argued at the final hearing or at a motion hearing noticed prior to the date of the final hearing. When all parties are represented by counsel, the hearing officer may also allow each party one (1) written request for production of documents, on an expedited basis, prior to the hearing and may issue subpoenas duces tecum for witnesses to bring documents to the hearing. Any motions allowed by this procedure must be made at least ten (10) days before a hearing is scheduled and served upon all parties, to be considered.

- e. Within thirty (30) days from the hearing, the Hearing Officer will complete and submit to the Professional Standards Specialist and the person requesting the hearing a final order consisting of the findings of fact and conclusions of law as to the granting or denial of the appeal. The Hearing Officer will uphold or reverse the decision giving rise to such appeal but may not grant any allied, additional, alternative, or supplemental relief in the same order. The Professional Standards Specialist shall mail the Hearing Officer's final order to the Contract Administrator, the Purchasing Director and the employer or responsible service contractor. If there is a final determination that the covered employer or responsible service contractor has violated the Living Wage Ordinance, Broward County may enforce its remedies against and sanction the employer or responsible service contractor in any manner permitted by the Living Wage Ordinance, the Broward County Procurement Code, and the employer's or responsible service contractor's contract with Broward County.
- f. This complaint procedure should be concluded prior to the institution of any civil action regarding the same subject matter. Appeal from the decision of the Hearing Officer will be by certiorari to the circuit court in accordance with the Florida rules of Appellate procedure and will be based on the record established before the Hearing Officer.
- g. Upon a party's timely and proper written motion (filed on or before the date of the hearing), the Hearing Officer will be empowered in the exercise of sound professional discretion to award costs to the prevailing party in the appeal if the Hearing Officer finds there was a complete absence of a justiciable issue of either fact or law raised by the institution and maintenance of the appeal (or its defense). The Hearing Officer shall only apply Florida Statutes, Section 57.105 and case law decided under this statute in making such determination. Costs under this subsection will include the Hearing Officer's fee, costs of the hearing room, the copying costs for the appeal, any costs of discovery authorized in accordance with this section of the Code, postage for subpoenas or other letters or communications sent during the course of this appeal, and witness fees. No other item of costs should be considered.

**LIVING WAGE ORDINANCE 2008-45**

**COMPLAINT PROCEDURE**

- h. All hearings will be held in Broward County, Florida and Florida law will apply.
- 8. If the employer or the responsible service contractor disagrees with the determination of the Professional Standards Specialist, the employer or the responsible service contractor has the right to request, within 10 calendar days, an administrative hearing before a Hearing Officer. The request for a hearing before the Hearing Officer must be in writing, filed with the Professional Standards Section within 10 calendar days of receipt by the employer or the responsible service contractor of the written report. It must identify the particular findings, conclusions, and/or remedies challenged, and the facts and arguments in support of the challenge.
- 9. Hearing Procedure. Refer to the Hearing Officer procedure in Item 7.
- 10. Hearings before the Hearing Officer will not require an appeal bond.
- 11. An employer or the responsible service contractor shall not discharge, reduce the compensation of, or otherwise discriminate or retaliate against any employee or subcontractor of a service contractor for filing a complaint in accordance with the Living Wage Ordinance, or otherwise asserting his or her rights under the Ordinance. If it is determined that there was retaliation or discrimination by the employer or the responsible service contractor against the covered employee or subcontractor of a service contractor, the employer or the responsible service contractor will be subject to one or more of the penalties listed above or any other remedies provided by law.