

The Current State of Wage Theft in Miami-Dade

- Miami-Dade County has the largest amount of documented wage theft cases (7,641) and the largest average amount of wage recovery per worker (\$775) in the state of Florida.¹
- Since Miami-Dade enacted the Wage Theft Ordinance in February of 2010, wage theft claims have been on the rise, doubling in one year.
- Small Business Development (SBD)², the county office that oversees the Wage Theft Program, has received 1,927 complaints and has recovered a total of \$511,429 through the conciliation process.³
- The average number of days it took to recover wages through the conciliation phase was 103 days.
- There are more than 500 workers who have filed complaints that are still waiting to be helped.
- Over \$2 million dollars that has yet to be collected for workers filing complaints.
- The Wage theft program is understaffed with only 1.5 staff dedicated to handling complaints.

What is wage theft?

Wage theft occurs whenever a worker is robbed of legally owed wages because an employer breaks the law or a contract. Common forms of wage theft include:

- **Nonpayment of wages:** An employer fails to pay workers for some or all hours of work performed, or fails to pay workers in a timely fashion.
- **Underpayment of wages:** An employer pays workers less than they were promised or less than they are legally owed under state or federal minimum wage or overtime statutes.
- **Tipped job violations:** An employer pays tipped employees less than the legally mandated minimum wage for tipped jobs, forces tips to be “shared” with managers or steals workers’ tips.
- **Deduction violations:** An employer diminishes workers’ pay by making unauthorized or illegal deductions from paychecks
- **Misclassification of employees:** An employer falsely labels an employee as an “independent contractor” in order to avoid obligations to pay minimum wage and overtime (along with a host of other employment laws, and unemployment insurance, workers’ compensation, and income tax payments). The “independent contractor” exemption was meant to apply only to individuals such as physicians, lawyers, dentists, veterinarians and construction contractors who are paid for services, but who do not work under the direction and control of others who hire, fire, direct their work, and pay them. Misclassification also includes, for example, calling a cashier a “salaried manager” to avoid the overtime provisions of federal law.

¹ U.S. Department of Labor, Wage and Hour enforcement data analyzed by RISEP.

² Formerly a stand-alone department that is now a division within a larger department.

³ The time frame for these figures is from January of 2010 through August 29, 2012.

Is This a Problem in Miami-Dade County?

Miami-Dade County has the largest amount of documented wage theft cases (7,641) and the largest average amount of wage recovery per worker (\$775) in the state of Florida.

Wages and Number of Employees with Wage Theft Cases in Miami-Dade County Sep 2008 to Jan 2011			
County	Total Wages Recovered	Number of Employees with Wage Theft Cases	Average Wages Recovered Per Employee
Miami-Dade	\$5,920,338	7,641	\$775

Source: U.S. Department of Labor, Wage and Hour enforcement data analyzed by RISEP

The negative effects of shortchanging workers' wages ripple across communities and the economy. Families suffer when earnings are too low to meet basic needs. Local businesses and economies are denied vital stimulus that would flow from the additional spending of workers had they been paid all that they had earned. Honest businesses are undermined by unscrupulous competitors who practice wage theft. And government at all levels take a hit, because they are denied tax revenues generated by higher earnings and because many working families must resort to public programs to meet basic needs when wages fall short.

"I have heard of other contractors not paying their workers the minimum wage and this kills my business. I lose bids to these employers all the time. This unfair business model feeds into the economic recession."

--Blake, General Licensed Contractor in Miami-Dade County

Miami-Dade as an example of creating good government policy

On February 18, 2010, Miami-Dade County commissioners voted 10 to 0 for the passage of the first county wide Wage Theft Ordinance in the state and country. This law established a policy of intolerance for wage theft and seeks to recover lost wages and punish employers who choose to break the law. To accomplish these goals, the ordinance provided for the creation of a readily accessible mechanism that allows county residents to report employers who have not paid all of the wages legally earned to their employees.

"When we look at the state of our local economy, there are several factors that play into our current condition. Wage theft is one of those forces that affects us. Families are struggling to make ends meet and cannot afford delayed payments or no payment at all. By signing this law into place and by keeping it well resourced, we are stating that the County vows to protect our workers and good employers from wage theft."

-Miami-Dade County Commissioner Barbara Jordan, co-sponsor
of the Wage Theft Ordinance

Miami-Dade
County's Wage
Theft Ordinance
has recovered
over \$500,000 in
unpaid wages
from them.

The Small Business Development Agency (SBD) was designated to administer and oversee the Wage Theft Ordinance. The SBD is also charged with overseeing and enforcing the county's Living Wage Ordinance. Under the Wage Theft Ordinance, the SBD established a review and implementation process that first attempts to conciliate any claims by notifying the employer of the filed claim and asking both parties to provide supporting documents. The employer must provide payment records. If they fail to do so they have violated federal labor laws. Should SBD staff be unable to reconcile a claim, the case is sent to a hearing examiner. If a hearing examiner finds

an employer guilty of violating the Wage Theft Ordinance, the employer becomes liable for the original wage owed, plus an additional amount equal to two times the wages owed as compensation to the employee. Additionally, the employer will be liable to the county for the cost of the hearing examiner and administrative fees. The threshold for filing a claim is \$60 of unpaid wages and there is no cost for filing. The Miami-Dade Wage Theft Ordinance covers all employees in the county, including those who are not covered under the federal or state laws.

The majority of the employees who have filed wage complaints with the SBD were not covered by the federal and state minimum wage laws, meaning that the WHD of the DOL could not take their cases. In fact, the SBD estimates that 60 to 80 percent of its incoming cases have been referred from the Wage and Hour Division in Miami.

The passing of the ordinance was an example of good government policy stating that county commissioners care about working people, their families, and their communities.

“The law mostly targets small businesses that may be outside the purview of federal labor regulations. Miami-Dade's economy relies heavily on these small businesses and their generally low-wage jobs... That's why this law makes such good sense here and why other South Florida counties should follow Miami-Dade's lead and adopt similar ordinances.”

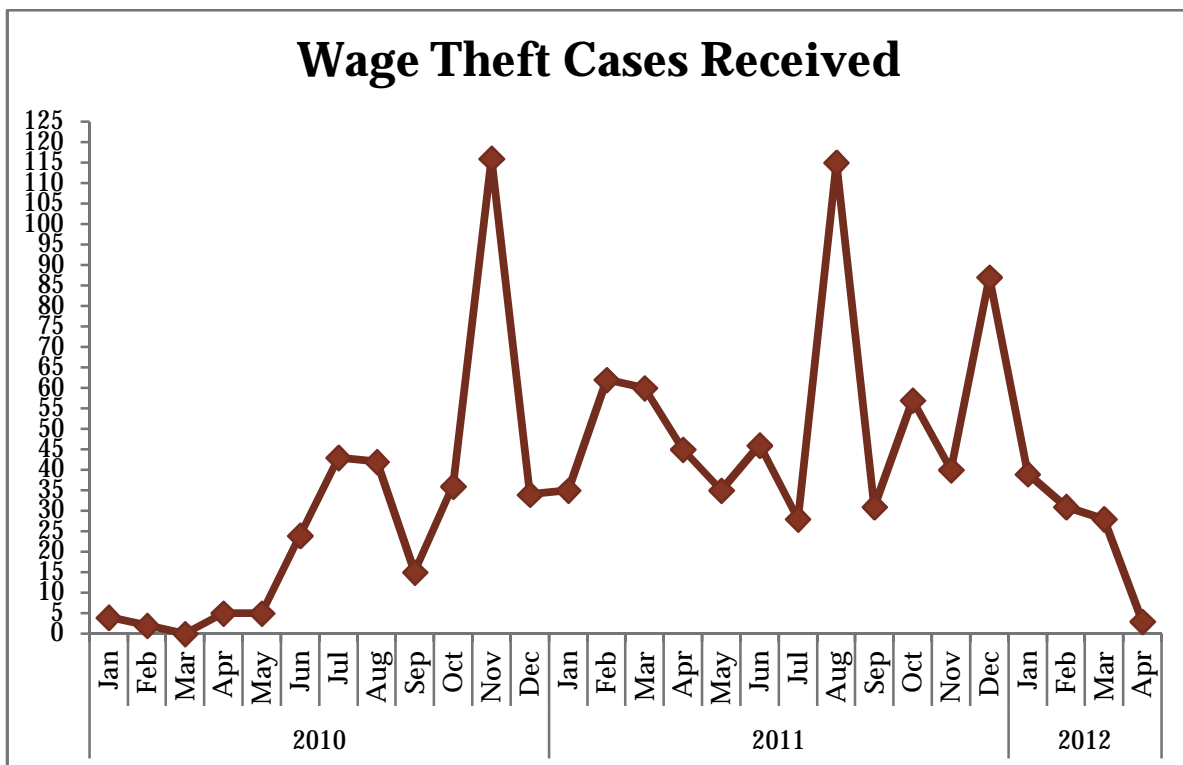
— Miami Herald Editorial, May 15, 2010

Rudy Xutuc, a landscaper who has already benefitted from this program, came to thank the Commissioners personally for their support. He was denied \$4,800 from his previous employer, but, through the assistance of WeCount!, a community-based organization in Homestead, Florida, Rudy was able to contact the SBD and file a claim and receive his unpaid wages.

“I have nothing else to say but thank you. This has been very important for me; because my salary is the only thing I count on to survive. I know this ordinance will help many vulnerable workers like me. Thank you commissioners, for protecting us.”

Problems with Current Allocated Resources to the Wage Theft Program

In just over two years, the Small Business Development, has recovered more than \$500,000 and has helped nearly 400 workers recover their stolen wages. While the county office has done a lot for workers and their families, **there are over 500 workers who have filed complaints that are still waiting to be helped. In fact, there are more \$2 million dollars that has yet to be collected for these victims.** Wage theft complaints continue to be filed with the SBD, doubling each year since the ordinance was implemented, **yet the wage theft program is understaffed with only 1.5 staff dedicated to handling complaints.**



Source: Miami-Dade's Small Business Development Agency: filed wage theft intakes

The chart above delineates the total number of wage theft claims received from January 2010 through April 3, 2012. Small Business Development (SBD) was assigned to administer the Wage Theft Program after county commissioners passed the Wage Theft Ordinance on February 10, 2010. SBD did not receive its implementing order⁴ until ten months later in November of 2010, yet SBD began to receive wage theft complaints since the day the ordinance was enacted with several claims being immediately referred from other County departments and the South Florida Wage Theft Task Force. Unfortunately, these cases were not covered under the ordinance since they occurred prior to its passage.

⁴ The Implementing Order is the set of methods or work plan needed to execute the Wage Theft Ordinance.

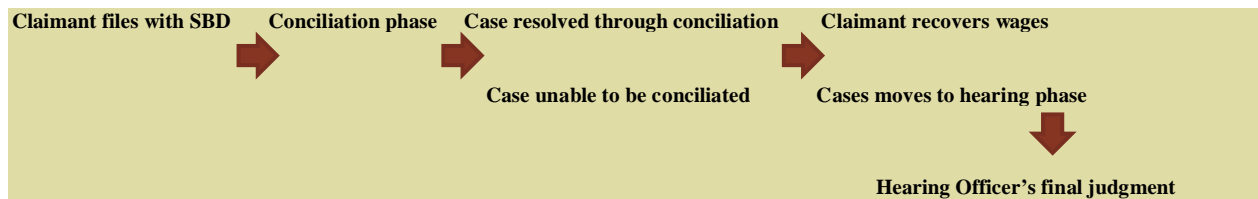
Wage Theft Cases Received per Year

2010 (Jan-Dec)	326
2011 (Jan-Dec)	641
2012 (Jan-April)	101

Source: Miami-Dade's Small Business Development Agency: wage theft intakes

The number of claims received in 2011 (641 complaints) was nearly double the total number of claims received in 2010 (326 complaints). The increase in filed wage theft claims has created a backlog of cases that need to be resolved by the two staff assigned to oversee the Wage Theft Program. The backlog in filed complaints has created longer processing and resolving periods for wage theft cases. The total number of wage theft cases received since January of 2010 through April 3, 2012 is 1,020 cases.

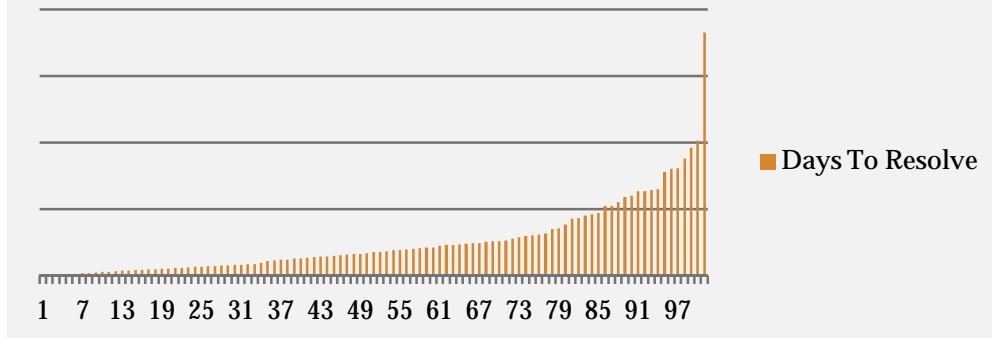
SBD's Process for Resolving Wage Theft Cases



SBD staff first attempt to resolve wage theft cases through a conciliation process. In this phase the SBD attempts to reach the employer against which the claim was filed either through a phone call or a letter. If employers are unwilling to resolve the wage dispute, then the next step is for the case to be set for a hearing. During this phase a hearing officer will hear the case and determine a final judgment. The majority of the resolved cases have been resolved through conciliation without having to proceed to the hearing phase.

Since the Wage Theft Ordinance's implementing order was not passed until late 2010, the hearing process did not begin until January 2011, which has resulted in a backlog of cases that have not yet been heard by a hearing officer. Currently, SBD holds monthly hearings in which approximately 20-24 cases are heard. Increasing the number of hearings per month would expedite the hearing process and thus reduce the backlog of cases pending the hearing phase.

Days To Resolve Wage Theft Cases through Conciliation Phase, 2010-2012



Source: Miami-Dade's Small Business Development Agency, conciliated cases.

- The average number of days it took to recover wages through the conciliation phase was 103 days.
- Approximately 46 conciliated cases took longer than 103 days to resolve.
- Twelve of the conciliated cases took approximately 254 days to be resolved.

SBD has been unable to systematically document how many claimants in the hearing phase have been awarded judgments and have collected on the awarded judgments. Without this information, the total amount awarded to claimants through hearings has not yet been determined.

In December of 2011, the Research Institute on Social and Economic Policy (RISEP) made an attempt to gather this missing information by reaching out to workers who had been through the hearing process. RISEP discovered that out of the 30 claimants we reached, none had not been able to recover the wages owed them.

Amount Claimed by Complainants	\$2,539,418.74
Amount Recovered through Conciliation Phase	\$437,537.54
Uncollected⁵	\$2,101,881.20

Despite the lengthy time it takes the SBD to resolve the greater majority of the wage theft claims and the backlog of cases that has resulted from the both the increase of wage theft claims and the lack of designated program resources at the SBD, the SBD has been able to recover more than \$500,000 for workers and their families, yet over \$2 million dollars remains to be collected.

⁵ This includes cases still in conciliation, and any other unaccounted for cases during a review of the data. Some cases do not move forward for various reasons.

Conclusion

Wage theft claims filed through Small Business Development have been increasing since the Wage Theft Ordinance passed in 2010. Further, wage claims are likely to continue to increase due to the lack of wage and hour enforcement in Miami-Dade County. The increase in wage theft claims and the lack of designated program staff results in a heavy case load for the two county staff assigned to the Wage Theft Program, one of whom is assigned only part-time to the Program. This, in turn, results in claimants having to wait longer periods to have their claims or intake forms evaluated, their claims resolved through conciliation, their cases heard through the hearing process and their order mailed out where following the hearings. In addition to the effect that delays have on the claimants, delays in the process also embolden offending employers who become more likely to disregard outreach done by the SBD staff.

In addition, the inability of claimants to collect their awarded wages after the hearing phase⁶ represents a major weakness of the Wage Theft Program. Employers are simply undermining the hearing officers' final orders, creating a challenge for SBD's ability to collect wages for claimants.

More staff and resources for the Wage Theft Program are needed to:

1. Help process wage theft complaints/intake forms to reduce the backlog of cases;
2. Reduce the length of time it takes to process and resolve cases;
3. Systematically document case outcomes in all stages of the process so that information on the Program is readily available;
4. Schedule bi-monthly hearings to expedite the hearing process and thus reduce the backlog of cases waiting for hearings; and
5. Establish a smooth post-hearing process that can be utilized by those workers who need to pursue collection of their orders.

Miami-Dade's economy depends on its workforce receiving a paycheck. The creation of the Wage Theft Program is an example of a good government policy, one that has been lauded throughout the state and the country. The wages that have been recovered by SBD are essential to hard-working people who rely on getting paid for their work. More staff dedicated to the Wage Theft Program is fundamental to the efficacy of the Program as more wage theft claims are filed. A more efficient Wage Theft Program deters employers from using wage theft as a business model and it benefits Miami-Dade's workers, families, local businesses, and economy.

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⁶ There have been problems with the Clerk of Courts recognizing the orders issued by the Hearing Officers although efforts are being made to resolve this problem.