

# Wage Theft Ordinance: Guidelines

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## **INTRODUCTION**

This report provides recommendations for implementing Philadelphia's Wage Theft Ordinance, which will take effect in July 2016.<sup>1</sup> It breaks down the process required by the ordinance, raises questions about how to implement each step of the process, and provides recommendations based on a comparison with other cities with similar ordinances.

This report highlights important issues that arise when analyzing the implementation of Philadelphia's Ordinance. First, there are a number of forms that need to be created. Second, the wage theft coordinator ("WTC") will need written guidance to make more explicit certain procedures. Those procedures include, for example, how the WTC will determine whether to accept a complaint, when to default an employer, and how to apply the appropriate standard of review. Third, it identifies some procedures from other cities that could increase the efficiency of the program. One such recommendation is providing the parties with an opportunity to settle the claim at a settlement conference mediated by the WTC. Finally, the report identifies some overall issues for consideration, such as providing sufficient access for individuals with limited English proficiency.

This report is comprised of three parts. Part I is a color-coordinated flowchart outlining the process of the ordinance and raising important considerations for implementation. It is split into three major sub-processes: (1) receiving, reviewing, and deciding wage theft complaints; (2) determining license revocation; and (3) structuring and implementing a community outreach program. Part II explores each of the important considerations for implementation for each of the three major sub-processes and provides recommendations. Part III includes exhibits of exemplary sample forms, notices, and orders collected from other cities.

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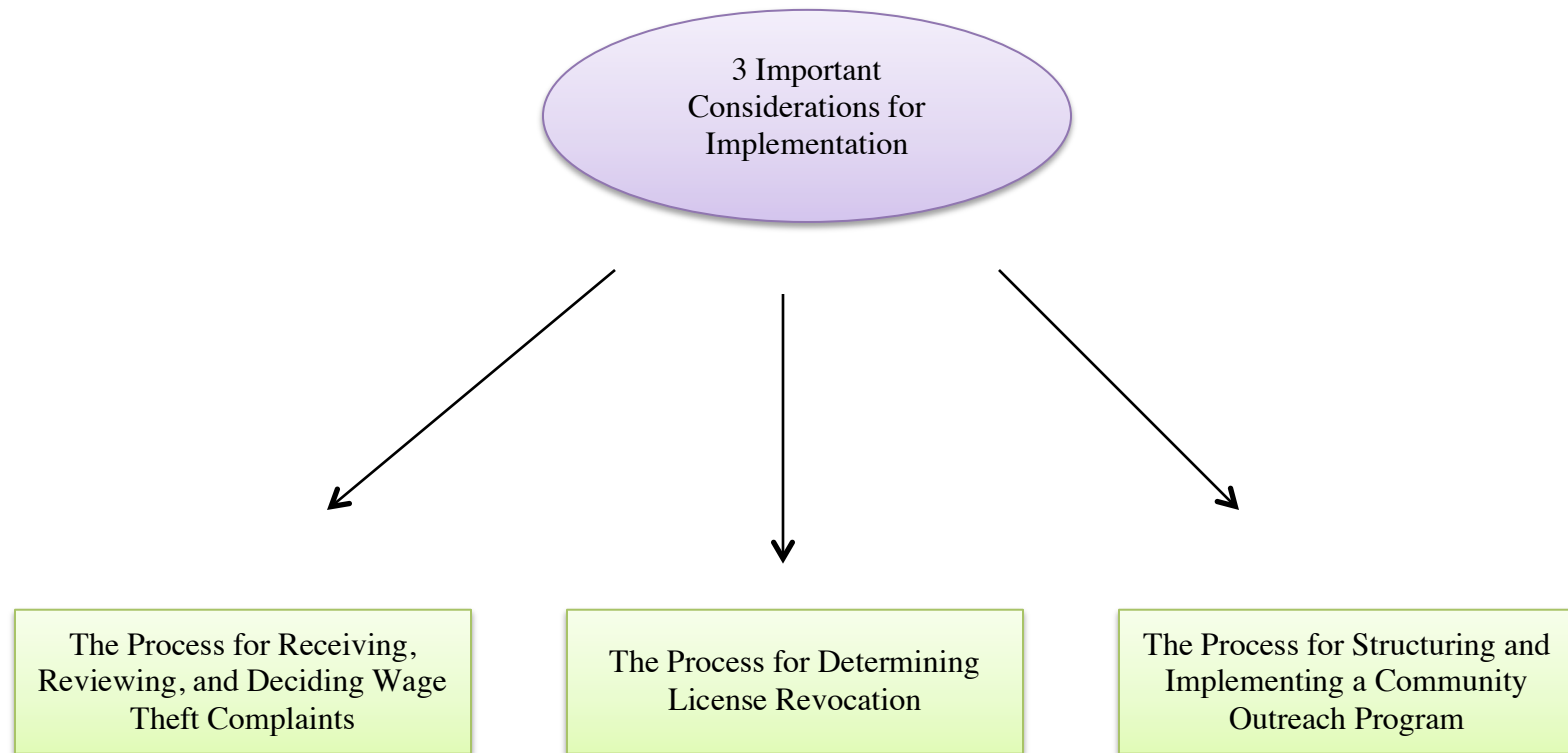
<sup>1</sup> Please note that this is still a working draft of this document. Please do not cite without permission.

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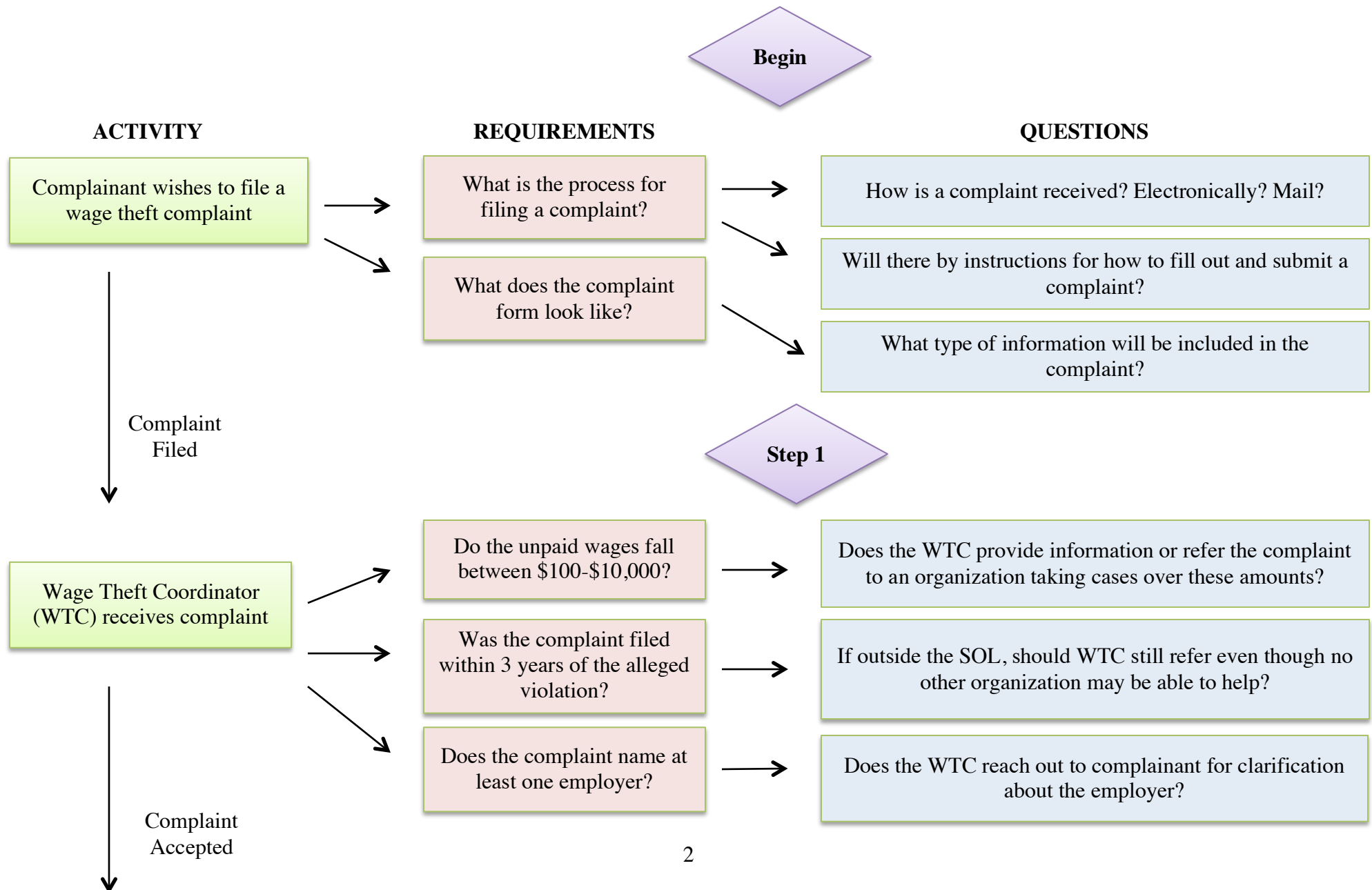
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# PART I

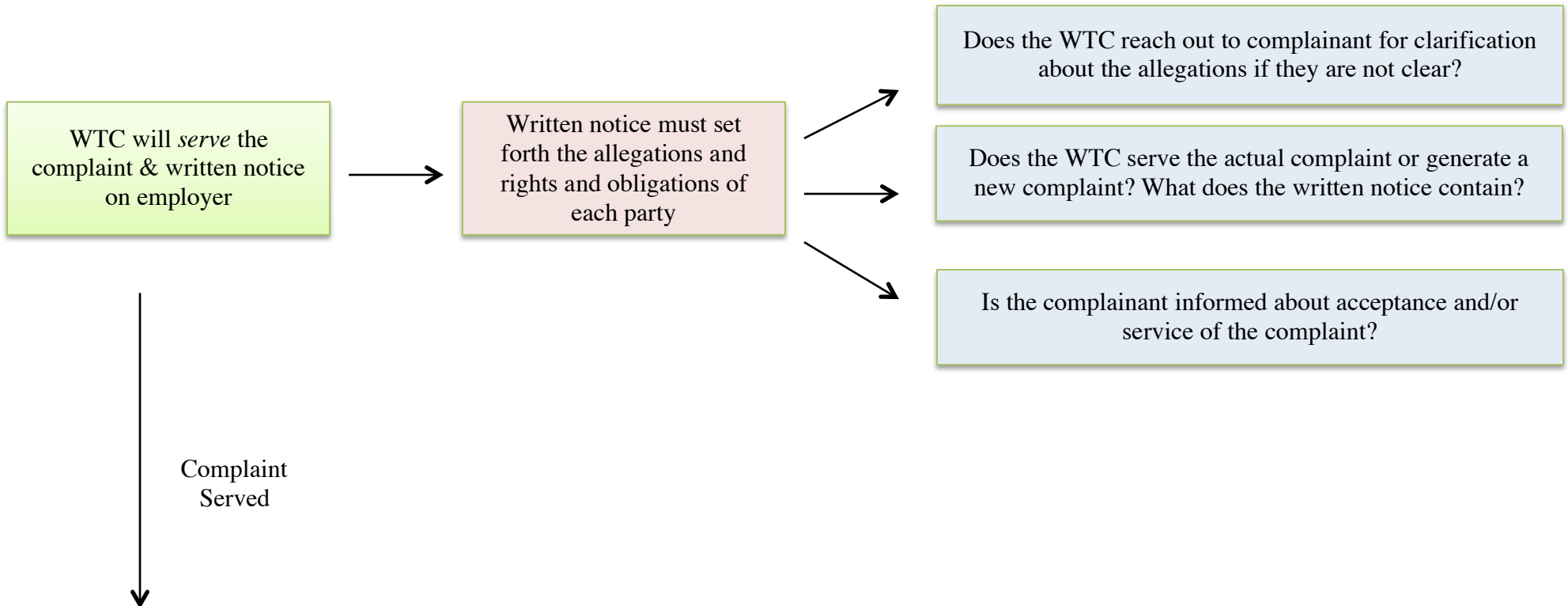
## Implementing Philadelphia's Wage Theft Ordinance



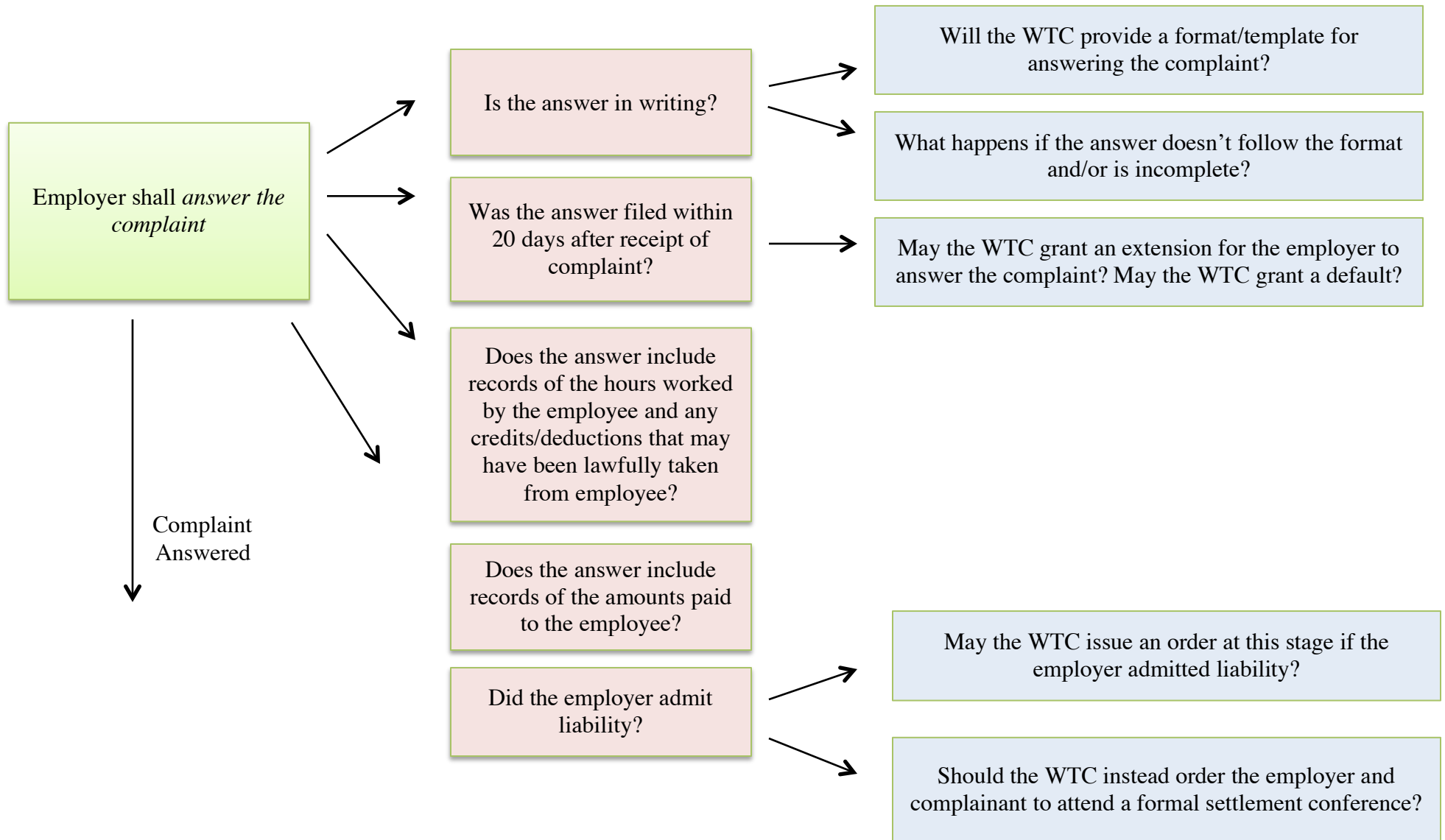
## Process for Receiving, Reviewing, and Deciding Wage Theft Complaints



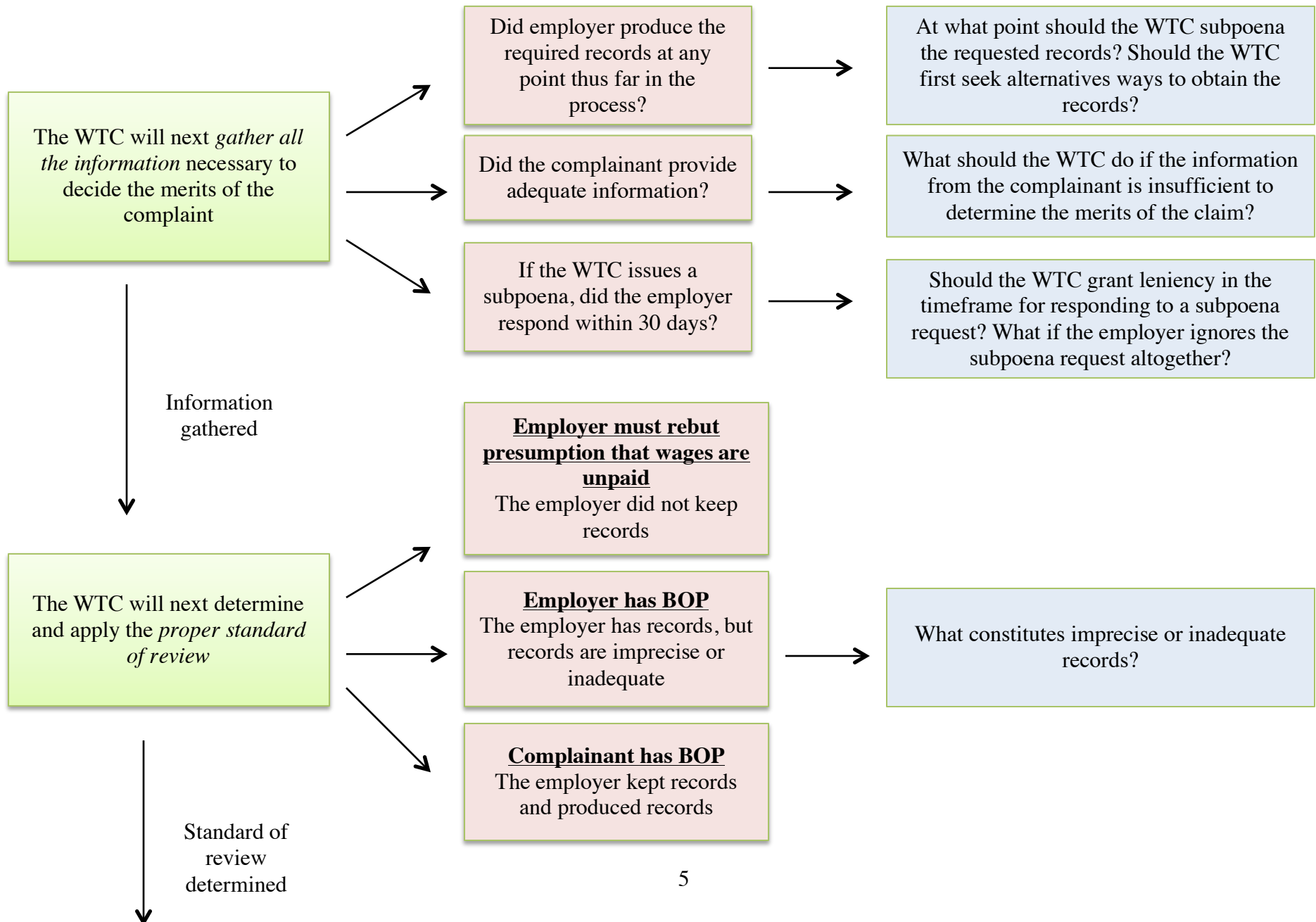
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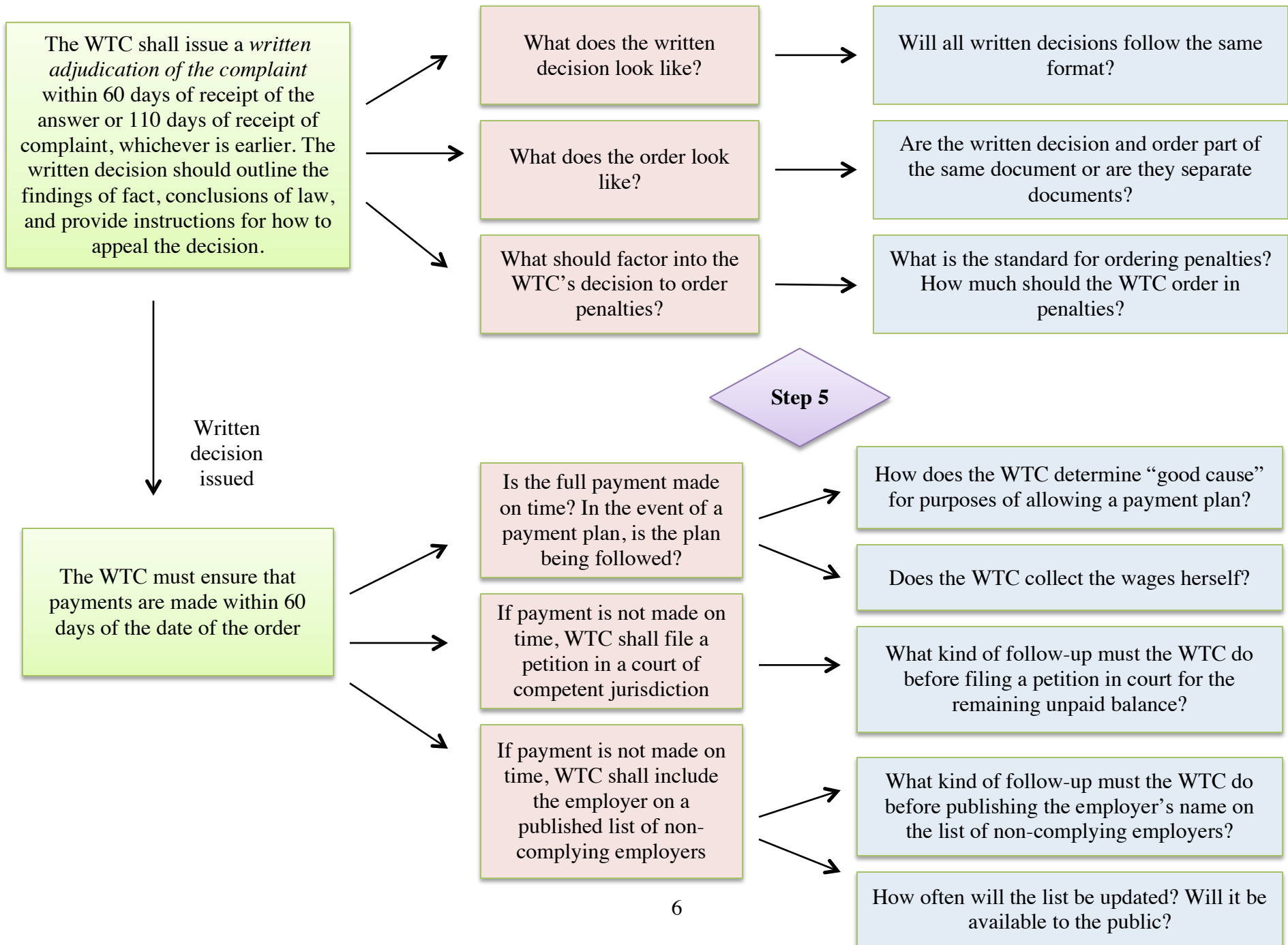
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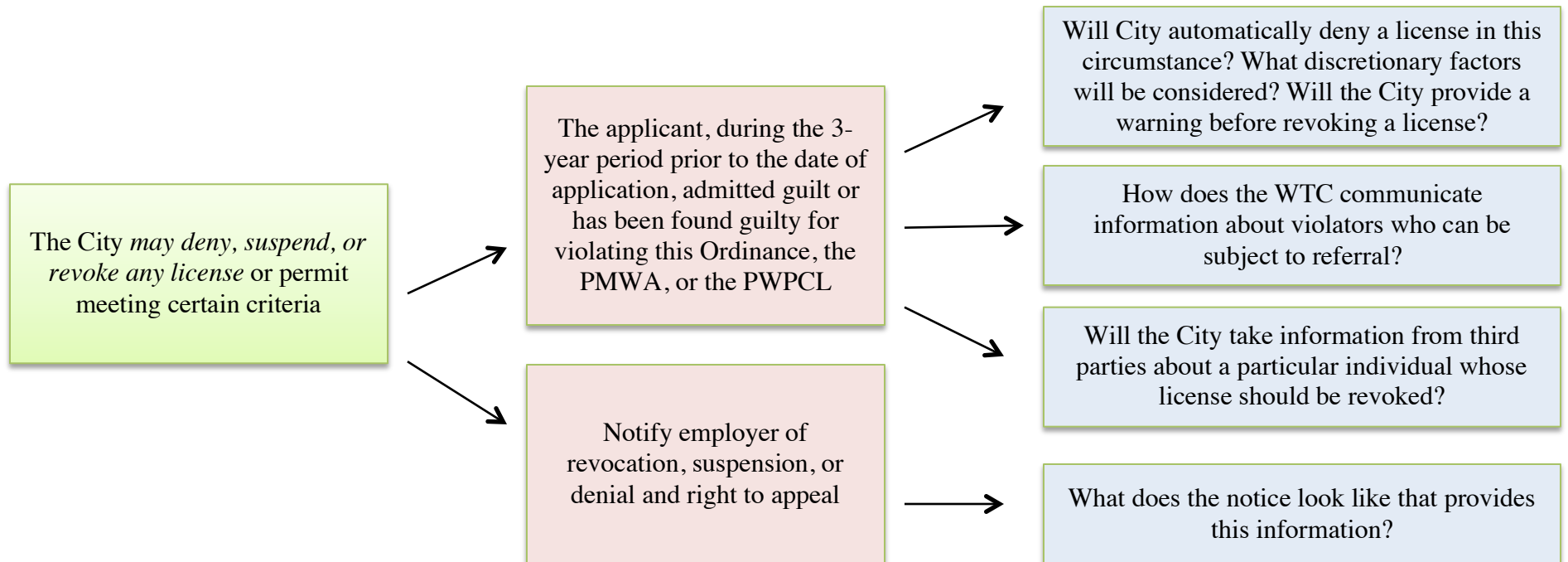
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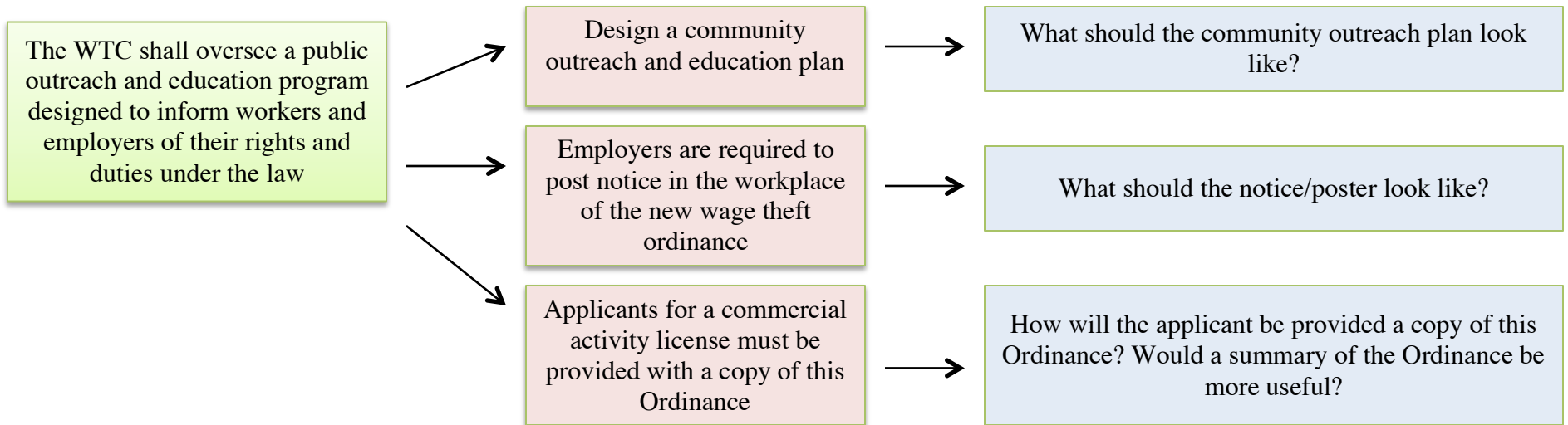




## Process for Determining License Revocation



## Process for Structuring and Implementing a Community Outreach Program



# PART II

## Process for Receiving, Reviewing, and Deciding Wage Theft Complaints

# Beginning Questions: Filing the Complaint

## Questions

### 1. Receiving Wage Theft Complaints

- How is the complaint received? Electronically? Mail? Phone?

*Recommendation:* The complaint should be received in the maximum ways possible, by mail, fax, online, phone, and in person. The WTC should work together with Philly311 to increase access to information about Philadelphia's new wage theft Ordinance.

- In Miami, the complaint is received by mail, fax or email.
- In San Francisco, the complaint can only be filed by mail or in person at the Labor Commissioner's Offices. The file requires an original signature and therefore cannot be faxed or emailed.
- In DC, the complaint can be filed by email, on the phone, and in person.
- In Seattle the office responds to complaints and questions by phone, in person with hours open to the public or through a web form.
- Los Angeles plans to accept complaint forms online through their website or by email, in person, and by mail or fax to the Office.
- Philadelphia currently has Philly 311 to provide direct access to city government information and services.  
<http://www.phila.gov/311/Pages/default.aspx>

- Will there be instructions on how to submit a complaint?

*Recommendation:* There should be simple instructions on the website with more detailed FAQs available at a different link.

- In Miami, there are both instructions on the site as well as a 3-page FAQs document available online. See attached sample.
- In San Francisco, the instructions are available on their website.
- In DC, the instructions are available on their website. See attached sample.

## 2. Format of Wage Theft Complaints

- What does the form look like?

*Recommendation:* The form should be simple enough for the complainant to understand but detailed enough for the wage theft coordinator to determine if there is a valid claim. The form should be a mix between the Miami and DC forms. See attached samples.

The form should request information about:

- (1) the complainant and their employer;
- (2) the type of wage theft alleged;
- (3) dates and documents.
- (4) preliminary questions determining if the claim is within the jurisdiction;
- (5) language assistance and representation information;
- (6) information on employee's weekly schedule; and
- (7) a damages calculation.

The form should be signed under penalty of perjury. Along with the complaint form the WTC should request that the complainant attach copies of any and all documents to support the claim, such as check stubs, W-2's, cancelled paychecks, timesheets, time cards/slips and employment agreements/contracts.

- In Miami, the form is a three-page wage complaint affidavit. The form requests three kinds of information about: (1) the complainant and their employer; (2) the specific type of alleged wage theft; (3) dates and documents. The form is signed under penalty of perjury. Along with the Affidavit the Wage Theft Office requests that the complainant attach copies of any and all documents to support the claim, such as check stubs, W-2's, cancelled paychecks, timesheets, time cards/slips and employment agreements/contracts. See attached sample.
- In San Francisco, the form is a four-page initial report or claim. The form has eight sections: (1) with preliminary questions determining if the claim is within the jurisdiction; (2) language assistance and representation information; (3) complainant's information; (4) employer information; (5) wages and checks information; (6) schedule information; (7) payment information; and (8) damages information. The fourth page is for office use only.
- In DC, the form is a four-page wage payment form. The form has three sections: (1) the complainant's personal information; (2) the employer's information; (3) employment information such as dates of employment. The form also has a section to determine if it falls within the jurisdiction and also request information on damages. The form is signed under penalty of perjury. See attached sample.

- In Seattle, the complaint form is a 1-2 page webpage for any general Office of Civil Rights or Office of Labor Standards complaint such as a wage theft violation, housing discrimination or minimum wage violations.

### **Guidance/Regulation**

- *Miami-Dade Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>
- *San Francisco-State of CA Department of Industrial Relations Website*
  - <http://www.dir.ca.gov/dlse/howtofilewageclaim.htm>
- *DC's Department of Employment Services Website*
  - <http://does.dc.gov/service/wage-hour-compliance>
- *Seattle Office of Labor Standards Wage Theft Website*
  - <http://www.seattle.gov/laborstandards/wage-theft>
- *City of Los Angeles Bureau of Contract Administration Website and Frequently Asked Questions*
  - <http://bca.lacity.org>

# Stage 1: Processing Wage Theft Complaints

## Questions

### 1. Role of the WTC in Processing Complaints

- If the unpaid wages do not fall within the threshold amounts does the WTC provide a referral? What does the referral look like and how is it made?

*Recommendation:* Philadelphia should develop a list of agencies that it can provide to complainants who do not fall within the threshold amounts.

- In Seattle, they refer a complainant to an organization that can help them.
- In DC, if the complaint is not within the Office of Wage and Hour's jurisdiction, the complainant will receive a notification letter via mail that may include additional resources to assist the complainant.
- What happens if the alleged wage violation occurs outside the statute of limitations?

*Recommendation:* Philadelphia should reject claims older than 3 years.

- Every city with a wage theft ordinance rejects expired claims.
- What happens if the complaint fails to name the employer? Does the WTC reach out to the complainant to get more information, or is the complaint rejected?

*Recommendation:* Philadelphia should reject complaints that do not provide information on employers.

- Each City looked at requires the complainant to provide the employer's information — if the complainant fails to do so the complaint is rejected.

### Guidance/Regulation

- *Miami-Dade Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>
- *Seattle Office of Labor Standards Wage Theft Website*
  - <http://www.seattle.gov/laborstandards/wage-theft>



## Stage 2: Service & Written Notice

### Questions

#### 1. Serving the Complaint and Written Notice

- Does the WTC serve the original complaint on the employer (the one submitted by the complainant), or does she create a new complaint?

*Recommendation:* Philadelphia should serve a copy of the original complaint on the employer via certified mail as well as a written notice informing the employer of the next steps in the case.

- In Miami, a formal notification of the complaint (including a copy of the Wage Theft Complaint Affidavit filed by the complainant) is sent to the employer via certified mail.
- In DC, a copy of the complaint and a notification letter is sent to the employer via mail along with a notification letter and request for a written response.
- What does the written notice look like? Will the written notice be a standard form that will be served on each employer?

*Recommendation:* As mentioned above, the written notice should be a simple letter to the employer explaining the wage complaint, outlining the rights of the parties, requesting a response, and requesting payroll and time records. It would also be useful to include a brief explanation of how the employer should respond to the complaint and the general process for how to contest the complaint. See Stage 3.

- In Miami, the analyst assigned to the case sends a formal notification of the complaint to the employer; the formal notification is the same for each employer.
- In DC, a notification letter is sent to the employer, which requests a written response and records related to the specific wage claim. Specifically, the notification letter states: (1) the alleged violation, (2) potential damages, penalties, and other costs, (3) rights and obligations of the parties, and (4) process for contesting the complaint.

- Is the complainant informed that the complaint has been accepted and served on the employer?

*Recommendation:* At the very least, the WTC should update the complainant when he serves the complaint on the employer. See general recommendations for informing the parties in Stage 1.

- In Miami, DC, Seattle, and San Francisco the complainant is informed after the formal notification of the complaint is sent to the employer.

## **Guidance/Regulation**

- *DC's Department of Employment Services Website*
  - <http://does.dc.gov/service/wage-hour-compliance>
- *Notice of the DC Wage Theft Prevention Act*
  - [http://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/NOTICE%20OF%20WAGE%20THEFT%20PREVENTION%20AMENDMENT%20ACT%20OF%20%202014.pdf](http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/NOTICE%20OF%20WAGE%20THEFT%20PREVENTION%20AMENDMENT%20ACT%20OF%20%202014.pdf)
- *Miami Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>
- *California Labor Commissioner's Office's Resource Guide for Recovering Unpaid Wages*
  - [http://dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20Unpaid%20wages%20with%20the%20Labor%20Commissioner's%20Office/Brochure-WCA\\_WEB-English.pdf](http://dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20Unpaid%20wages%20with%20the%20Labor%20Commissioner's%20Office/Brochure-WCA_WEB-English.pdf)

## Stage 3: Filing the Answer

### Questions

#### 1. Format of the Answer

- What does the answer look like? Will the WTC provide a form/template for answering the complaint?

*Recommendation:* Philadelphia should require a written answer to the complaint, but the answer need not be formal or follow a certain template. Requiring a formal written answer could prolong the process and make it more difficult for the employer to respond within the 20-day period. However, simply requiring a phone call from the employer is also not ideal because the response and possible admission/denial of liability would not be recorded anywhere. As mentioned above, it would be useful to include brief instructions for how to respond to the complaint when the notice is sent to the employer, as is done in DC.

- In Seattle, there is also no formal written answer required – the employer is simply required to provide various documents, and this will constitute their “answer.” Depending on what the complainant is alleging, the employer may be required to provide: (1) number of employees & job descriptions; (2) timecards; (3) payroll records, (4) copy of any notice given to employee of their rights under the Ordinance.
  - In DC, the employer is required to file a written response, but there is no guidance on what the written response should look like. The employer is, however, told the process for contesting the complaint, which may include instructions for how the answer should be structured.
- What happens if the answer is incomplete?

*Recommendation:* The WTC should reach out to the employer to obtain the information necessary to proceed to a conference or to issue a written decision.

- In Seattle, the OLS reaches out to employers via phone and mail to obtain the information.
- Because some jurisdictions do not require a written answer, there is not much guidance on what to do if the answer is incomplete. In Miami, for example, the analyst assigned to the case speaks with the employer on the phone and is able to obtain all the relevant information during the call.

- What happens if the answer is inadequate such that the WTC cannot review the merits of the claim?

*Recommendation:* Instead of issuing a subpoena for the inadequate information in the answer, the WTC should first proceed to an informal or formal settlement conference based on the degree of liability alleged in the answer. If settlement negotiations fail and the WTC must proceed to the final adjudication stage, the WTC should then subpoena records if important information is still lacking and the employer is unwilling to produce the information. See Stage 4.

## **2. Timeliness of Filing the Answer**

- What happens if the employer does not respond within the 20-day period? May the WTC grant an extension?

*Recommendation:* Absent extraordinary circumstances, the WTC should not grant an extension to respond to the complaint, especially if the response need only be brief and informal.

- In Miami, after the employer receives the formal notification of complaint, he must contact the analyst at the wage-hour office assigned to the case. The employer may request additional time to respond to the allegations, but no longer than the allotted 21-day period. The analyst is not permitted to grant an extension past the 21 days.
- If the employer does not respond within 20 days, may the WTC grant a default?

*Recommendation:* The WTC may grant a default, but the WTC should first take care to reach out to the employer through various avenues before issuing such a finding. Encouraging voluntary compliance may lead to better outcomes for the complainant. If the employer still does not respond, the WTC should schedule the case for the next available settlement conference and inform the employer. If the employer fails to show up for the conference, the WTC can then issue a default order.

- In Seattle, a default finding of noncompliance may be issued if the employer does not provide the requested information during an investigation. However, this is a drastic measure and the OLS tries to reach out to employers in a variety of ways before taking such action.
- In Miami, if an employer doesn't respond within 21 days and the office has confirmation of receipt of the formal notification, the office schedules the case for the next available hearing. If an employer fails to appear at the hearing, the hearing will proceed and a final order awarding damages and costs may be rendered.

- In DC, if an employer doesn't respond within 20 days, the allegations in the complaint will be regarded as admitted, and a default judgment enforceable in court will be issued in favor of the worker

### 3. Issues of Liability in the Answer

- What happens if the employer admits full liability? Does the WTC issue an order at this stage?

*Recommendation:* If the employer admits full liability, instead of issuing an order, the WTC should provide the parties an opportunity to settle the claim. The WTC should not allow settlement for less than the clearly owed wages, i.e., the minimum amount of wages owed as evidenced by the records. This will prevent an employer from admitting liability only to coerce settlement for substantially less than the wages owed. If for some reason the complainant and employer cannot reach an agreed settlement, the WTC should schedule the parties for a settlement conference (see below).

- What happens if the employer admits partial liability or denies liability?

*Recommendation:* Regardless of whether the employer admits partial liability or denies liability, the WTC should require the complainant and employer to attend a settlement conference. Attending a settlement conference, with the WTC acting as a more formal mediator, may persuade the employer to reach an agreement and expedite the payment process. It would also save the WTC time because he wouldn't have to issue a written decision. In this instance, the employer may be less likely to settle the case for the wages owed, so it is important that the WTC does not allow settlement for less than the wages she believes are clearly owed.

- In Miami, San Francisco, and Seattle all employers must attend a settlement conference or conciliation, regardless of liability. In these jurisdictions, if settlement negotiations fail, the parties proceed to the final adjudication stage, which is an administrative hearing.

- What happens if the employer fails to show up or the settlement conference fails?<sup>1</sup>

*Recommendation:* If the employer fails to show up to the settlement conference, the WTC can issue a default order. If the parties cannot reach an agreement, the WTC should proceed to the final adjudication stage, determine whether wages are owed, and issue a written decision (see below).

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<sup>1</sup> If Philadelphia adopts the recommendation for a settlement conference, there are a host of other procedural questions that arise that are not explored in this guide.

## **Guidance/Regulation**

- *DC Wage Theft Prevention Act of 2014*
- *Seattle Office of Labor Standards Wage Theft Website*
  - <http://www.seattle.gov/laborstandards/wage-theft>
- *Miami Wage Theft Program Website and Frequently Asked Questions*
  - <http://www.miamidade.gov/business/wage-theft.asp>

## Stage 4: Reviewing Wage Theft Complaints

### Questions

#### 1. Information Gathering and Subpoena Process

- If the employer fails to provide the requested records, will the WTC automatically subpoena the records? Should the WTC first try to obtain the records through other avenues before using subpoena power?

*Recommendation:* Subpoenaing records should be used as a last resort. It should not be considered as an option until the complaint has reached this stage. At this stage, the WTC has likely tried to contact the employer multiple times through multiple avenues. Because the settlement conference has failed, the WTC should inform the parties that he will now review the complaint and issue a written decision and order. If the employer is still noncompliant, the WTC may subpoena the records if it is necessary to determine the merits of the claim.

- In Seattle, the OLS may subpoena records if the employer does not provide the requested information during an investigation. However, this is a drastic measure and the OLS tries to reach out to employers in a variety of ways before taking such action.
- What happens if the employer does not return the records within the 30-day timeframe for responding to the subpoena?

*Recommendation:* The WTC should use her discretion when determining how to handle an employer who fails to timely return subpoenaed records. If the employer shows good faith, for example, the WTC may decide to give the employer more time, especially if the records are absolutely necessary to decide the claim. On the other hand, if the employer ignores the subpoena request altogether, the WTC may seek enforcement of the subpoena by filing a petition for enforcement in court.

- In DC, the ALJ allows an employer to petition to quash or modify a subpoena upon a showing that the subpoena: (1) requires production of evidence that is unrelated to the matter or (2) does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason. If the employer simply ignores the request, however, the ALJ may seek enforcement of the subpoena by filing a petition for enforcement in a court of competent jurisdiction.

- What should the WTC do if the information provided by the complainant is insufficient to determine the merits of the claim?

*Recommendation:* If the complainant failed to provide evidence of his time worked, either during the initial complaint stage or during the settlement conference stage, the WTC should determine why the complainant has not done so. The WTC should provide the complainant with a list of evidence that may be sufficient to meet his burden of proof. This is important because the complainant may have indirect evidence, such as text messages or emails, but may not know that this evidence is relevant to his claim.

- In Miami, there is a published list of instructions/guidelines to help complainants navigate through a wage theft hearing. These instructions list common examples of evidence and supporting documentation that the complainant should bring to the hearing. See below.

## **2. Determining Standard of Review**

- What happens if the employer doesn't keep records?

*Recommendation:* If an employer doesn't keep records, a rebuttable presumption arises that the wages complained of were not paid.

- In DC, the burden of proof shifts to the employer if the employer failed to keep records of an employee's hours worked, or if records are imprecise, inadequate, missing, fraudulently prepared, or are substantially incomplete.

- What constitutes imprecise or inadequate records?

*Recommendation:* If the records produced are imprecise or inadequate, the employer bears the burden of proof. Records should be deemed imprecise or inadequate if the records fail to comply with the record-keeping requirements under the PMWA. The WTC can make such a determination with a checklist, for example, that requires records to show: (1) hours worked each day and hours worked each workweek, (2) regularly hourly pay, (3) total daily or weekly regular earnings, (4) total daily or weekly overtime earnings, (4) all additions to or deductions from the employee's wages, (5) total wages paid each pay period, and (6) the date of payment and pay period covered by the payment.

- What does "sufficient evidence" mean for purposes of a complainant meeting the burden of proof? Paystubs? Weekly schedule?

*Recommendation:* It will be in the discretion of the WTC to determine what, singly or in combination, constitutes "sufficient evidence" Evidence such as paystubs, cancelled paychecks, timecards, weekly schedules, employment contracts, and W-2s may constitute "sufficient evidence" for purposes of



meeting the burden of proof. Information from the complainant's original complaint, sworn under the penalty of perjury, will be considered. The WTC may follow up with the complainant and any witnesses to get additional sworn statements."

- In Miami, examples of supporting documentation necessary to prevail on a wage claim include, but are not limited to: (1) copy of demand letter employee may have sent to employer; (2) copy of paycheck; (3) check stubs or payroll vouchers; (4) copy of any agreements entered into and signed by both parties; (5) a written, notarized statement, with name and address, from fellow employee(s) who could substantiate the complaint; (6) copy of work schedules or timesheets; (7) copy of W-2; (8) any records maintained by complainant of the hours/days worked; (9) if the complaint involves a verbal agreement, complainant should provide a thorough written statement detailing terms of the agreement, with supporting evidence such as text messages or emails.

### **3. Penalties**

- What is the standard for ordering penalties? How much should the WTC order in penalties?

*Recommendation:* Penalties are subject to Philadelphia's Home Rule Charter. The WTC should order 200% penalties for the wages owed, subject to the \$2,300 cap per workweek. This aligns with the penalties that could be recovered under wage and hour laws. This amount is also fair considering that good faith employers and those who admitted liability for the wages owed have likely settled the claim and will not be subject to the penalties provision.

- May the WTC order higher penalties?

*Recommendation:* In determining whether to order higher penalties, the WTC should weigh a variety of factors, including: (1) egregiousness of the wage violation at issue, (2) employer's history of wage violations, including whether the employer kept payroll records as required by law, (3) timeliness of producing requested information, and (4) general willingness of employer to cooperate throughout the process, including during settlement conference. If the violation is wanton or willful, the WTC should order the maximum allowable penalties.

#### 4. WTC's Written Decision and Notice to the Parties

- What does the WTC's written decision look like? Will all written decisions follow the same format?

*Recommendation:* A written decision should be issued for each claim that has not settled. The written decision should follow the same format for each complaint. It should contain: (1) an explanation for the particular decision reached, including the factual and legal basis for that decision in light of the evidence provided by both parties; and (2) whether wages and/or penalties are or are not determined to be owed.

- In DC, following the hearing, the Mayor issues a final decision. The final decision shall provide a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order detailing the amount owed by the employer, if any.
  - In San Francisco, the Hearing Officer's decision details the factual and legal basis for her decision and, if applicable, orders the amount the employer must pay.
  - In Seattle, there is no separate written decision issued — only an Order.
- What does the order look like? Are the written decision and the order contained in the same document?

*Recommendation:* For the complaints where wages are determined to be owed, an order should come after the written decision. The order should follow the same format for each complaint. It should: (1) briefly outline what law(s) the employer violated; (2) contain an order to pay wages and penalties; and (3) the process for how to pay the wages and how to appeal the decision. The order used by the OLS in Seattle is a good example.

- In Seattle, the written decision specifies what law(s) the employer violated, the total amount of back wages owed and a deadline for paying those wages, the total amount of penalties ordered and a deadline for paying those penalties, and the general process for appealing the decision. See attached sample.
- Will the WTC provide notice of the written decision and order to each party?

*Recommendation:* Yes. The WTC should provide written notice of the decision to both the complainant and the employer.

- In Miami, San Francisco, DC, and Seattle, the Office provides written notice of the decision to both parties.

## **Guidance/Regulation**

- *DC Wage Theft Prevention Act of 2014*
  
- *Seattle Office of Labor Standards Wage Theft Website and Frequently Asked Questions*
  - <http://www.seattle.gov/laborstandards/wage-theft>
  
- *California Labor Commissioner's Office's Resource Guide for Recovering Unpaid Wages*
  - [http://dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20Unpaid%20wages%20with%20the%20Labor%20Commissioner's%20Office/Brochure-WCA\\_WEB-English.pdf](http://dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20Unpaid%20wages%20with%20the%20Labor%20Commissioner's%20Office/Brochure-WCA_WEB-English.pdf)
  
- *Miami Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>

## Stage 5: Collecting and Processing Payment

### Questions

#### 1. Determining Payment

- How does the WTC determine “good cause” for purposes of allowing a payment plan?

*Recommendation:* In determining whether to allow a payment plan, the WTC should consider how financially feasible it is for the employer to pay the unpaid wages and penalties in one lump sum. If the employer produces financial records showing that he cannot pay the ordered amount without severe financial detriment, the WTC should determine that “good cause” has been shown and allow a reasonable payment plan.

- How should the WTC ensure payments are made on time?

*Recommendation:* The WTC should pursue recovery of ordered amounts through any means available (phone contact, onsite visit etc.), while the amounts ordered accrue interest.

- In Seattle, if an employer is not complying the Office of Labor Standards can issue subpoenas or a default finding of noncompliance. However, the office takes care to reach out to employers in a variety of ways before taking such action because voluntary submission of information usually results in a better outcome for employees. If wages are determined to be owed, interest on the wages will continue to accrue on the amounts ordered at a rate of 12 percent per annum, calculated monthly. If the employer fails to pay the full remedy, as defined in this Division Director’s order, within 20 days of receiving the order, OLS will pursue recovery of the listed amounts, plus attorney’s fees and costs through any means available.

- Does the WTC collect the wages herself?

*Recommendation:* Yes. The written order should include payment instructions — the employer should issue a check to the employee, which will include wages owed and any penalties ordered by the WTC, and deliver the check to the WTC within 60 days of the date of the order. If a payment plan is approved, the employer should deliver each check to the WTC.

- In Seattle, the written order directs the employers to issue checks payable to the employee for owed wages. The employer must deliver the check to

the OLS. If there are penalties, the written order directs the employers to issue checks payable to the City of Seattle.

- Do the parties notify the WTC when payment is complete? How is the process finalized?

*Recommendation:* Because the WTC collects the wages herself, she should know when payment is complete. However, there should be a procedure for formally finalizing the process, especially if the employer is on a payment plan. The WTC could simply issue a notice to both parties, explaining that the employer has completed payment, the complainant has received payment, and that the case is closed.

- In Miami, there is a formal process for recording a final order. The employer must notify the wage theft office once the judgment is satisfied (i.e. final payment is made). The office will then issue a Satisfaction of Judgment/Final Order upon receipt of a notarized affidavit signed by the employer attesting the judgment amount has been satisfied. See attached sample.

## **2. Filing a Petition in Court**

- What kind of follow-up must the WTC do before filing a petition in a court of competent jurisdiction for the unpaid balance?

*Recommendation:* The WTC should first pursue recovery of ordered amounts through all available means (phone call, onsite visit, etc.). Much like the WTC's subpoena power, this should be used as a last resort and the WTC should first try to facilitate voluntary compliance by the employer. If, after exhausting these options, the employer is still noncompliant, the WTC shall file a petition in court for the unpaid balance.<sup>2</sup>

- In Miami, if the County finds that an employer has failed to comply with the Hearing Examiner's order within 45 days after written notice, the County may, upon the request of the employer, grant the employer an additional 45 days to comply with any portion of the order, but interest will continue to accrue until payment is made.

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<sup>2</sup> Further research should be done to determine the exact process for how an order of the WTC becomes a judgment in court.

### 3. Published List of Employers

- Where will the list of non-complying employers be published? Online?

*Recommendation:* This list should be made available to the public on the wage theft website.

- In Houston, any company that has a documented record of wage theft (criminal conviction, final decision from the Texas Workforce Commission, or final decision from the court) is listed on a public database on the city website for five years.

- Will everyone have access to the list?

*Recommendation:* The purpose of this list is to deter employers from committing violations; therefore, this list should be made available to the public on the wage theft website.

- How often will the list be updated?

*Recommendation:* The list should be updated quarterly. Every time an employer has remedied its violation, however, the list should be updated.

- What are the criteria for being added to the list?

*Recommendation:* If the employer fails to comply with the order in full, these employers should automatically be added to the list of non-compliant employers. It should be in the WTC's discretion whether other non-compliant employers are added. Factors to consider include: how late the payment is (one day versus one month), whether the employer has complied with other payments (if on a payment plan), whether the employer has contacted the WTC, and whether the employer has cooperated throughout the investigation and has good cause for late payment.

*Additional Recommendation:*

As additional incentive for employers who wish to have their names removed quickly from the list, Philadelphia could offer that employers in high violation industries pay for their employees to obtain training. Such programs could include safety training and also serve as know-your-rights sessions. These trainings could be conducted by non-profit entities or worker centers and could educate workers about what to do if they believe their rights have been violated.

## **Guidance/Regulation**

- *The National Municipal Policy Network-Local Progress*
  - <http://localprogress.org/wp-content/uploads/2013/09/City-Strategies-to-Combat-Wage-Theft-and-Empower-Workers.pdf>
- *Miami Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>
- *Seattle Office of Labor Standards Wage Theft Website and Frequently Asked Questions*
  - <http://www.seattle.gov/laborstandards/wage-theft>

# Overarching Questions

## Questions

### 1. Language Access

- How should Philadelphia handle individuals with limited English proficiency?

*Recommendation:* The WTC should make language access a top priority in order to facilitate the process for both LEP employers and employees. This means providing forms and instructions in multiple languages, hiring bilingual staff, and providing access to an interpreter.

- In DC, the Office of Wage-Hour staff is fluent in a variety of languages. The Office also has available a language interpretive service which can assist with translations of more than 170 languages.
- In Miami, Seattle, and Los Angeles, the initial complaint form has an area where the complainant can request an interpreter, and each Office provides access to an interpreter at the complainant's request.

- Instructions

*Recommendation:* The instructions should be easily available on the same webpage in multiple languages.

- In San Francisco, the instructions are available in English, Spanish, Chinese, Korean, Vietnamese, Tagalog, and Punjabi.
- In DC, the instructions are in both English and Spanish within the same document.

- Complaint Forms

*Recommendation:* The complaint forms should be available in multiple languages. The complaint form should also have a section specifically focused on language assistance questions, such as whether the complainant requires an interpreter.

- In Miami, the wage complaint affidavit is only in English.<sup>3</sup> The website has the option to translate the entire page into different languages, but the forms are still in English.

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<sup>3</sup> They do have guidelines on what to expect from a wage theft hearing in Spanish and Creole.



- In San Francisco, there is a complaint form and instructions available in English, Spanish, Chinese, Korean, Vietnamese, Tagalog, and Punjabi.
- In DC, the complaint form is in both English and Spanish within the same document.
- In Seattle, the complaint form is not in multiple languages, but there is a section in the form to request interpretation.<sup>4</sup>
- In Los Angeles, the complaint form can be submitted, at a minimum, in English and Spanish. Available resources will determine the number of additional languages the system will accommodate for online complaints. There will also be a section on the complaint form to request an interpreter.

- Workplace Poster

*Recommendation:* The required posters should be available in multiple languages.

- In Seattle, there are posters available in ten different languages.
- In Los Angeles, the notice informing employees of their rights under the Ordinance must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at the five percent of the employees at the workplace.

- Conference Settlements

*Recommendation:* The conference settlements should have an interpreter present in LEP situations and where the complainant has specifically requested an interpreter.

## **2. Informing the Parties**

- How often should the WTC update the parties on the status of the complaint?

*Recommendation:* The WTC should reach out/update the complainant at the following times during the complaint process: (1) when the complaint is received; (2) after the WTC has reviewed the complaint and made an initial determination, whether it be to serve the complaint, dismiss the complaint, or refer the complaint; and (3) when and if the employer has responded. The WTC

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<sup>4</sup> The website has the option to translate the entire page into different languages, but the form is still in English.

should reach out/update both parties when: (4) the WTC determines the next steps in the case, such as the date for a settlement conference and; (5) the WTC issues an order of any kind.

- In San Francisco, after the initial report or claim is filed, the Wage Claim Adjudication Unit informs both the claimant and employer via mail of the next steps in the case (either referral to settlement conference, referral to hearing, or dismissal of claim)
- Through what means should the WTC update the parties?

*Recommendation:* The WTC should update the parties through whatever form of communication has been indicated as the best for that particular complainant, such as by phone, email, or regular mail.

- In Miami, notifications and updates are sent to the parties via mail. The analyst also updates the parties over the phone at various stages, such as when the employer is responding to the complaint.
- In San Francisco, notifications are sent to the parties via mail.
- In DC, as the investigation of the complaint proceeds, the complainant receives periodic e-mail notifications from the Office of Wage and Hour regarding the status of her case.

### **3. Independent Contractor Issues**

- What if the employer claims the complainant worked as an independent contractor, not an employee?

*Recommendation:* If the employer claims the complainant worked as an independent contractor and not an employee, the employer must satisfy the “Economic Realities Test” that is used by the Fair Labor Standards Act (FLSA) and the Pennsylvania State Minimum Wage Act (PMWA). This test will be in the form of a checklist that the WTC uses to determine whether the complainant was an independent contractor or employee. However, if the WTC determines that the complainant is an independent contractor, the complainant’s claim will be dismissed.

- Seattle’s list of frequently asked questions presents the scenario of an independent contractor vs. employer dispute and provides the 6-part “Economic Realities Test.” See attached sample.

## **Guidance/Regulation**

- *Miami-Dade Wage Theft Program Website*
  - <http://www.miamidade.gov/business/wage-theft.asp>
- *San Francisco-State of CA Department of Industrial Relations Website*
  - <http://www.dir.ca.gov/dlse/howtofilewageclaim.htm>
- *DC's Department of Employment Services Website & Frequently Asked Questions*
  - <http://does.dc.gov/service/wage-hour-compliance>
- *Seattle Office of Labor Standards Wage Theft Website*
  - <http://www.seattle.gov/laborstandards/wage-theft>
- *City of Los Angeles Bureau of Contract Administration Website and Frequently Asked Questions*
  - <http://bca.lacity.org>

# Process for Determining License Revocation

# Role of the City in License Revocation

## Questions

### 1. License Revocation

- What discretionary factors will the City weigh when determining whether to deny, suspend, or revoke a license?

*Recommendation:* In Philadelphia, committing a wage violation may result in the denial, suspension, or revocation of a business license. In addition to the requirement of a wage violation, Philadelphia should also consider: (1) the employer's history of wage violations; (2) an employer's willingness to remedy the violation; and (3) the willfulness of the violation(s) at issue. In jurisdictions with similar requirements for revocation, these are the general factors that are considered.

- In New Brunswick, one discretionary factor considered when determining whether to revoke a license is whether, after the appropriate hearing, the employer is continually non-compliant in paying wages required under the law.
  - In San Francisco, if prompt compliance in remedying the wage violation is not forthcoming, the Agency may request that the City deny or revoke a license.
  - In Chicago, the number of wage violations committed by the employer and the willfulness of the violations are considered before revoking a business license.
- Will the City provide any warning to the employer before denying, suspending, or revoking a license?

*Recommendation:* Yes. In the case of an employer who has committed a wage violation for the first time, the City should send the employer a final warning to pay the ordered wages before revoking the license. In the case of older unpaid court judgments or U.S. Department of Labor investigations, there should be a clear process for workers and third parties to refer the employer to the City, after which the City will issue a final warning letter to the employer with the opportunity to comply before revocation moves forward.

- How does the WTC communicate information about violators who can be subject to referral?

*Recommendation:* If the WTC determines that, based on the nature of the wage violation, an employer's license should be suspended or revoked, the WTC should refer in writing the name of the employer to the City's Department of Licensing and Inspection.

- Will the city take information from third parties about a particular individual whose license should be revoked?

*Recommendation:* Yes, the City should take referrals in writing from third parties who believe a particular employer's license should be denied, suspended, or revoked. The City should also affirmatively seek information on a semiannual basis from legal nonprofits, community organizations, and state and federal agencies such as the Department of Labor and Industry and the U.S. Department of Labor.

- For example, in San Francisco, the Office of Labor Standards Enforcement works with the health department to consider outstanding wage theft complaints before granting health permits to restaurants.
- What does the notice of denial, suspension, or revocation look like?

*Recommendation:* The notice should be in writing and sent to the employer via certified mail. The notice should outline the reasons for the denial, suspension, or revocation, including the date of the wage violation, the type of wage violation (violation of this Ordinance, the PMWA, or the WPCL) and the outcome of the violation (admitted guilt or found guilty). The notice should also include information on the period of non-issuance, non-renewal, or revocation and the process for appealing the City's decision.

- In Seattle, the City notifies the business owner in writing via certified mail of the denial, suspension, or revocation and on what grounds such a decision was based.

## **Guidance/Regulation**

- *The National Municipal Policy Network-Local Progress*
  - <http://localprogress.org/wp-content/uploads/2013/09/City-Strategies-to-Combat-Wage-Theft-and-Empower-Workers.pdf>
- *City of San Jose 2015 Memorandum on the City's Wage Theft Ordinance*
  - <http://www.sanjoseca.gov/DocumentCenter/View/42164>
- *Seattle Rule 5-003: Business License Suspension or Revocation*

# Process for Structuring and Implementing a Community Outreach Program

# Community Outreach & Education

## Questions

### 1. Community Outreach

- What should community outreach involve?

*Recommendation:* Philadelphia should partner with various community organizations that focus on different vulnerable communities and provide funding for outreach to educate and support Philadelphia's employees.

- In Seattle, the OLS selected ten different organizations and community partnerships to receive \$1 million in funding. These organizations provide outreach and technical assistance to Seattle's workers and educates them about their rights under Seattle's Minimum Wage, Wage Theft, Paid Sick and Safe Time, and Fair Chance Employment Ordinances.
  - ✧ The organization activities include door-to-door outreach, hosting community-based education events, developing training materials to educate workers and other organizations about Seattle's labor standards, and providing labor rights intake, counseling, and referral for workers experiencing labor standards violations. Each organization and partnership focuses on reaching out to low-wage working communities who disproportionately experience workplace violations.
  - ✧ The website reveals the amount of money each organization receives and what its communities of focus are.
- In San Francisco, the OLSE is required to work with community partners to develop culturally and language-appropriate outreach materials, and currently distributes approximately \$600,000 per year in grants for community outreach.
- In Burlington, VT, the city funds worker education through the city-appointed independent monitoring agency, the Vermont Worker's Center, which educates employees about their rights under city ordinance.
- In New York City, The Department of Youth and Consumer Development currently grants approximately \$300,000 from Neighborhood Development Area funds to legal service and worker education to combat wage theft.



## 2. Notice for Workplace

- What should the notice that employers are required to post in their workplace look like?

*Recommendation:* A simple poster such as the one used in Seattle is a great example of what Philadelphia should use. The poster should include information on employers' obligations and employees' rights under the law, information on different wage violations, with examples, and information on when and how an employee can file a wage theft complaint, including a phone number and email contact.

- In Seattle, the poster is divided between information on the minimum wage and information on wage theft, including types of claims workers can file with the Office of Labor Standards. See attached sample.

## 3. Commercial Activity License

- How will the applicant be provided a copy of this Ordinance?

*Recommendation:* While the Ordinance states that the City should provide a copy of the Ordinance to all applicants for a commercial activity license (CAL), it may be more useful to have the City provide a simple summary of the relevant and important provisions of the Ordinance. The summary should include information on the notice & posting requirements, the process for receiving, reviewing, and determining wage theft complaints, and the process for denying, revoking, or suspending CALs. The Ordinance itself and an accompanying summary should also be available on the City's website for easy access.

## Guidance/Regulation

- *San Francisco-State of CA Department of Industrial Relations Website*
  - <http://www.dir.ca.gov/dlse/howtofilewageclaim.htm>
- *Seattle Office of Labor Standards Wage Theft Website*
  - <http://www.seattle.gov/laborstandards/wage-theft>
- *The National Municipal Policy Network-Local Progress*
  - <http://localprogress.org/wp-content/uploads/2013/09/City-Strategies-to-Combat-Wage-Theft-and-Empower-Workers.pdf>

# PART III

## Sample Forms, Notices, and Orders from other Jurisdictions

# Instruction Samples

## **WAGE THEFT PROGRAM FREQUENTLY ASKED QUESTIONS**

The Miami-Dade Board of County Commissioners approved an ordinance prohibiting "Wage Theft" in the county. The ordinance, governed by Chapter 22 of the Code of Miami-Dade County, became effective on February 28, 2010.

### **What is Wage Theft?**

Wage Theft is defined under the ordinance as any employer that fails "to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation."

### **What is the minimum required to file a Wage Theft?**

You must be able to show the following:

1. That you were an employee of the company or person; and
2. That the work for which you were not paid was performed in Miami-Dade County; and
3. That the amount of wages owed is more than \$60; and
4. That it has been no more than 1 year since the work was performed.

### **Is there a cost associated with filing a wage complaint?**

No. The County offers assistance to the public through the Wage Theft Program.

### **Do I have to be a legal citizen in order to file a wage complaint?**

No. Legal status is not a criterion necessary to file a wage theft complaint.

### **Can I file an anonymous wage theft complaint?**

No. The employer has to know who filed the complaint as they have the right to defend against the allegations.

### **How soon can an employer be contacted to provide notification of a wage theft complaint?**

A claimant must be without pay for at least 14 days past the last pay period in which the claimant should have been paid in order for Miami-Dade County to begin the process.

### **If my former employer has filed for bankruptcy can I still file a wage theft complaint with Miami-Dade County?**

No. You must file a claim with the Bankruptcy Court.

### **Do I need an attorney to file a wage theft complaint?**

No. You may have attorney, but an attorney is not required to file a complaint.

**Can I hire an attorney to file a wage theft complaint?**

Yes. Some claimants or employers choose to hire an attorney to represent them. However, if the claimant files suit in civil court or before any other tribunal regarding the same wages, then the claim under Chapter 22 of the Miami-Dade County Code of Ordinances will be dismissed.

**Can I be represented by someone who is not an attorney?**

Yes. The ordinance allows for non-lawyer advocates as an alternative to counsel, however in any proceeding, a Hearing Examiner may disallow the representation for good cause.

**In addition to wages, can I claim other expenses owed such as fees for bounced checks, gasoline, construction costs, etc. in my complaint?**

No, only unpaid wages can be claimed.

**Can I file a complaint if my case includes intrastate commerce?**

Yes. As long as all work was performed within the Miami-Dade County geographical boundaries.

**If I have evidence to accompany my complaint am I guaranteed success?**

No. Each case is handled and analyzed on an individual basis, and on its own merits. Variables such as evidence, testimony, willingness of employer to conciliate, etc. may affect the outcome. Just as in a court of law, success is never guaranteed.

**If I do not have any evidence because my former employer paid me with cash, how can I establish that I worked for my former employer?**

Emails, text messages, job invoices, ledger of hours/days worked, witnesses and pictures can serve as evidence of employment.

**Can I file a complaint if I was an independent contractor?**

No. The ordinance specifically excludes independent contractors. However, you may still be able file suit in the court system to recover monies owed for worked performed.

**Can I file a complaint if I am owed less than the \$60 minimum?**

No. The minimum amount required is \$60.00.

**If I performed the work outside of Miami-Dade County, can I file a complaint because the company is based in Miami-Dade County?**

No. Where the employer is based is irrelevant as the work must have been performed within Miami-Dade County.

**Can I withdraw my complaint at any time?**

Yes. Just notify the County by sending a written request of cancellation via U.S. Postal Service, Email or fax.

**What happens if I don't attend my scheduled hearing?**

If a complainant does not attend their scheduled hearing the case will be dismissed. If the employer does not attend, the hearing will proceed in their absence and a final order awarding damages and costs may be rendered.

**What do I do if I receive a partial payment related to my wage complaint from my employer?**

Notify the County immediately so that the complaint can be amended to reflect the corrected amount claimed.

**If an employer wants to settle a filed complaint without the County's involvement, can I enter into a settlement with my former employer without the County's participation?**

Yes. Some employers and employees prefer to settle directly outside of the County. If a settlement is reached the employee should notify the County immediately and provide a written request to close their complaint.

**Should I accept a settlement from my employer if it is less than the amount I am owed?**

Accepting a settlement proposition is a personal decision that only a claimant can make.

**Does the County represent the employee or employer?**

Neither. Although all valid wage complaints are investigated, the County remains neutral in all proceedings to best facilitate conciliation or settlement between both parties.

**Will the County help me prepare and present my case if it must go to a hearing?**

No. If it is necessary to go to an administrative hearing, each party must present their case before the hearing examiner. The County cannot assist in any way at a hearing. You should review the section entitled "What to Expect at the Wage Theft Hearing," for more detailed information about the hearing process.

**Should I bring all my original documents to the hearing?**

Yes. However, you should bring two sets of copies of all documents that you want the hearing examiner to consider. Any document given to the hearing examiner will not be returned to the party presenting the document.

**If I successfully prove my case at the hearing and receive a ruling in my favor, am I guaranteed payment of my unpaid wages and damages?**

No. The County cannot force anyone to pay. If you do not receive payment after forty-five (45) days, and you have not been notified by the County that the employer has requested more time to pay, you will need to take private legal action to attempt to collect your money.

# **Please Read These Instructions Carefully Before Filing a Claim with the Office of Wage-Hour (OWH)**

**Por favor Lea cuidadosamente estas instrucciones Antes de someter su demanda a la Oficina de Salarios y Horas Laborales**

**When you file a claim through the online process, a PDF copy of your claim will be available to print and keep for your records. YOU MUST HAVE A VALID EMAIL ADDRESS to submit a claim online. This email will acknowledge your wage claim submission to OWH. It may take up to 24 hours for you to receive this notification; please do not submit your claim more than once.**

(Al someter su demanda de sueldo no pagado vía este método electrónico. Una copia de formato de PDF de dicho formulario se le hará accesible para que usted lo imprima y lo guarde para su records o registro. USTED DEBE TENER UNA DIRECCIÓN DE CORREO ELECTRÓNICO VÁLIDA para presentar un reclamo/demanda. Dicho correo electrónico confirmara que su reclamo/demanda ha sido sometida a la Oficina de Salarios y Horarios Laborales. Puede tomar hasta 24 horas para que usted reciba dicha confirmación. Por favor, no someta su demanda más de una vez.)

**You must have Adobe Acrobat Reader to download, open or view the claim form in PDF format.**

(Usted debe tener la aplicación en su computadora de Adobe Acrobat Reader para poder ver el formulario en formato de PDF.)

**If you are claiming wages and/or entitled benefits from a different employer, you must use a separate claim form for each employer.**

(Si usted está reclamando los salarios y/o beneficios en diferentes períodos trabajados para distintos empleadores, debe utilizar un formulario separado para cada reclamo/demanda.)

**Fill out the claim form completely, and accurately, while providing as much of the requested information as possible. Please be mindful that fields with red asterisks are required; all other fields are optional.**

(Llene el formulario de solicitud completamente, y detalladamente; proporcione toda la información requerida. Por favor tenga en cuenta que los campos con asterisco rojo son obligatorios, ya que todos los otros campos son opcionales.)

**If your address and/or telephone number changes, it is your responsibility to notify OWH immediately or your claim may be closed. If you receive any payments directly from the employer, you must notify OWH of the amount and date received.**

(Si su dirección de domicilio, y/o número de teléfono cambia, es su responsabilidad notificar a la Oficina de Salarios y Horarios Laborales inmediatamente si no lo hace su demanda se anulara. Si usted recibe pago directamente del empleador usted debe notificar a nuestra oficina inmediatamente.)



## Do Not File A Claim If:



**(NO SOMETA UNA SOLICITUD DE DEMANDA POR SUELDO NO PAGADO SI):**

- **You are self-employed or an owner/operator.**

(Si trabaja por su propia cuenta o es dueño de la compañía/ o agente de la compañía.)

- **You are a government employee.**

(Usted es un empleado del gobierno)

- **You have filed suit against your employer for the same wage or entitled benefit claim.**

(Usted ha hecho una demanda en otra jurisdicción por el mismo salario o beneficios aquí reclamado.)

- **You are filing for expense reimbursements.**

(Usted está reclamando reembolso de gasto mientras estuvo empleado.)

- **You already have a civil court judgment involving this claim.**

(Si usted tiene una sentencia de la Corte/Tribunal civil por esta misma demanda.)

- **You are trying to obtain a W-2 or 1099. If so, you should contact the Internal Revenue Service at 1-800-829-1040.**

(Usted está tratando de obtener su formulario de W-2 o 1099, si este es el caso contacte al Servicio de IRS at 1800-829-1040.)

- **Your employer has filed bankruptcy. If so, you will need to contact the Bankruptcy Court for further instructions.**

(Su empleador se ha declarado en bancarrota concluyente en quiebra. Si es así, usted tendrá que ponerse en contacto con la Corte de Bancarrota para obtener más instrucciones.)

- **You do not know your employer's address or location.**

(Usted no sabe la dirección de domicilio o del negocio de su empleador.)

- **The statute of limitations for your claim has expired. A three (3) year statute of limitations applies when a claim is for unpaid wages, unpaid minimum wages, unpaid overtime compensation, commissions, illegal deductions, vacation pay, holiday pay, and sick pay earned according to a written contract or written policy or company practice.**

(El plazo de orden legal de la reclamación ha caducado. Tres (3) años de orden legal se aplica cuando un reclamo es para pagar los salarios mínimos, horas extras no pagadas, indemnización, comisiones, deducciones ilegales, y pago de vacaciones, pago de días festivos, pago por enfermedad percibidos bajo un contrato por escrito o política o práctica de la compañía.)



# **Filing A Claim**

## **(SOMETER UNA DEMANDA/RECLAMO)**

**By filing a claim with OWH, you may be prevented from pursuing this claim elsewhere, including civil court.**

(Al someter esta reclamo a la Oficina de Salarios y Horarios Laborales, usted elige un recurso que puede impedir que esta reclamo tenga resolución legal vía otros medios, incluyendo el Tribunal civil.)

**When your claim is received by OWH, the following steps are taken:**

(Cuando su reclamo es recibida por la Oficina de Salarios y Horarios Laborales los siguientes pasos se llevarán a cabo:)

**The claim is given to a compliance specialist to review. The compliance specialist determines if all of the required information is included on the claim form and whether investigation of the claim is within OWH's jurisdiction.** (Su reclamo es asignada a un investigador. El investigador determina si toda la información requerida está incluida en el formulario y determinara si esta oficina tiene jurisdicción sobre su reclamo.)

**If the claim is within OWH's jurisdiction, a case file is opened and a notification letter is sent by OWH to your employer requesting a written response. The letter will include requests for time records and other records related to the filed claim.**

(Si esta oficina determina que su reclamo es válida y dicha oficina tiene jurisdicción sobre su reclamo. Se archiva un caso y una notificación por escrito se le enviara a su empleador notificándole de la reclamo que usted ha puesto en contra de dicha compañía o empleador.)

**As the investigation of your claim proceeds, you will be sent periodic e-mail notifications from OWH updating you on the status of your case.**

(A medida la investigación va progresando, usted recibirá correos electrónicos notificándole del progreso en la investigación de su reclamo.)

**If the claim is not within OWH's jurisdiction, you will receive a notification letter that may include additional resources to assist you.**

(Si su reclamo no tiene jurisdicción bajo la Oficina de Salarios y Horarios Laborales, usted recibirá una notificación por escrito; el cual incluirá recursos adicionales que le podrán asistir para resolver su reclamo.)

**Please be aware that compliance specialists work on claims in the order in which they are received. The time required to complete an investigation depends on your cooperation, your employer's cooperation, and the complexity of the claim. While your claim is being investigated, you should obtain whatever records or documentation that you have to support your claim and provide copies, if requested.**

(Por favor, mantenga en mente que todos los investigadores trabajan en respectivas investigaciones de acuerdo en el orden en el cual son sometidas. El tiempo requerido para completar una investigación depende de su cooperación, la cooperación de su empleador, y la complejidad de su reclamo. Durante este tiempo usted debe

obtener cualquier documento que le ayude a favorecer su reclamo para cuando usted sea contactado por el investigador.)

**You MUST bring or send via U.S. mail a “REQUEST FOR COLLECTION OF WAGES AND DAMAGES” to our office, located at 4058 Minnesota Avenue NE, Washington, DC 20018. You may walk in or schedule an appointment by calling (202) 671-1880.**

(Usted debe traer o mandar “SOLICITUD PARA COLECCIÓN DE LOS SALARIOS Y EL PAGO DE DAÑOS Y PERJUICIOS” a nuestra oficina, que está localizada en el 4058 Minnesota Avenue NE, Washington, DC 20019. Puede venir a la oficina o hacer una cita llamando al (202) 671-1880.)

# Complaint Form Samples



*Delivering Excellence Every Day*

Consumer Protection Mediation Center  
601 NW 1st Court, 18th Floor  
Miami, FL 33136  
Phone: 786-469-2333  
Fax: 786-469-2303  
E-mail: [consumer@miamidade.gov](mailto:consumer@miamidade.gov)  
Web: [www.miamidade.gov/business/consumer-protection.asp](http://www.miamidade.gov/business/consumer-protection.asp)

**Wage Theft Complaint Affidavit**  
***Please provide all requested information.***  
***Incomplete affidavits will be returned to complainant.***

**Complainant Contact Information**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Suite/Apt. #: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Daytime No: \_\_\_\_\_ Home No: \_\_\_\_\_  
Cell No: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**NOTE:** *If your address or telephone number should change after filing this form you must promptly notify the County. Your complaint will be closed if the County is unable to contact you.*

Were you referred to this office by the U.S. Department of Labor (DOL) or another government agency? ☐ DOL ☐ No ☐ Other \_\_\_\_\_

Have you filed a private legal action? ☐ Yes ☐ No  
Has the employer filed for bankruptcy? ☐ Yes ☐ No  
Is the employer out of business? ☐ Yes ☐ No

**Employer Information**

Complete (Legal) Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone #: \_\_\_\_\_ Extension: \_\_\_\_\_  
Web URL: \_\_\_\_\_ Company's Email: \_\_\_\_\_

Owner/Supervisor's Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone #: \_\_\_\_\_ Cell Phone#: \_\_\_\_\_  
Email: \_\_\_\_\_

### What type of wage theft are you alleging?

*Note: you may not file a claim for expenses. Please provide all requested information.*

#### 1. What type of back wages are you owed? Please check all that apply

<input type="checkbox"/> I was not paid at all for some or part of the time	<input type="checkbox"/> I was not paid minimum wage and I should have been
<input type="checkbox"/> I was not paid at the wage rate promised	<input type="checkbox"/> I was not paid overtime and I should have been
<input type="checkbox"/> Unauthorized deductions were taken from my pay	<input type="checkbox"/> I was required to work through breaks
<input type="checkbox"/> I was not paid commissions as promised	<input type="checkbox"/> I did not receive earned sick/vacation leave upon separation
<input type="checkbox"/> Other (please specify):	

#### 2. What was your rate of pay?

Wage Rate: \$\_\_\_\_\_ Per: ☐ Hour ☐ Week ☐ Bi-weekly ☐ Month ☐ By Piece

If you checked "I was not paid at the wage rate promised" or "I was not paid minimum wage and I should have been" above, what should have been your wage rate?

Promised wage rate: \$\_\_\_\_\_ Per: ☐ Hour ☐ Week ☐ Bi-weekly ☐ Month ☐ By Piece

If you checked "I was not paid commissions as promised," how much are you owed and how were your commissions calculated?

3. What were the dates for which you were not paid?	
Regular Hours	Overtime Hours
From: _____ To: _____	From: _____ To: _____
Total unpaid hours: _____	Total unpaid OT hours: _____
Does this include breaks you were required to work through? <input type="checkbox"/> YES <input type="checkbox"/> NO	

#### 4. Are you owed additional earnings?

Total unauthorized deductions: \$ _____	Total tips owed: \$ _____
Total sick/vacation leave hours: _____	Total owed for earned leave: \$ _____

### TOTAL GROSS WAGE THEFT CLAIM

\$ \_\_\_\_\_

*(You may not file a claim for expenses. Claims without an amount cannot be processed)*

Please explain how you calculated your total gross wage theft claim:


## Other Required Information

Do you have any paystubs? (If yes, attach) ☐ YES ☐ NO

Do you have a W-2 from this employer (If yes, attach) ☐ YES ☐ NO

Did you keep a time record? (If yes, attach) ☐ YES ☐ NO

Did you make a written/oral request for your unpaid wages (If written, attach) ☐ YES ☐ NO

Was the work which is the subject of this wage theft complaint performed entirely within the geographical boundaries of Miami-Dade County? ☐ YES ☐ NO

Worksite Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Job title: \_\_\_\_\_

Are you a tipped employee (waiter, bartender, etc.)? ☐ YES ☐ NO

Are you considered a subcontractor/independent contractor? ☐ YES ☐ NO

Date of hire: \_\_\_\_\_ Last day worked: \_\_\_\_\_

Is the business (your employer) still in operation? ☐ YES ☐ NO ☐ DO NOT KNOW

I am represented by an attorney or advocate who is not an attorney: ☐ YES ☐ NO

If yes, provide:

NAME \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Extension: \_\_\_\_\_

By submitting this complaint affidavit I declare, under penalties of perjury, that I have read the foregoing complaint affidavit, that the facts stated in it are true and that any supporting documentation I submit will be copies of genuine documents. I hereby agree to participate in any conciliation efforts by the Consumer Protection Mediation Center, and I hereby request a hearing on this complaint before a Hearing Examiner, should conciliation efforts fail. I understand that I am solely responsible for collecting any award I may receive at hearing and further understand my complaint is a public record and that a copy of this complaint will be sent to the employer for their response.

\_\_\_\_\_  
Signature

\_\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

Affidavit must be signed by complainant for processing. For e-signature instructions please visit our website at <http://www.miamidade.gov/business/wage-theft.asp>

Wage Payment Claim



# OFFICE OF WAGE-HOUR WAGE PAYMENT FORM

CLAIM NUMBER: 16-WP-XXX

## Section 1 (Seccion 1) Personal Information (Información Personal)

YOUR FULL NAME:

LAST FOUR DIGITS OF SS#:

ÚLTIMOS CUATRO DIGITOS DE SS#:

SU NOMBRE COMPLETO:

(first name, middle initial, last name)

YOUR STREET ADDRESS:

DIRECCIÓN DE DOMICILIO:

CITY:

CIUDAD:

STATE:

DC

ESTADO:

ZIP CODE:

CÓDIGO POSTAL:

DAY TIME PHONE NUMBER:

NÚMERO(S) DE TELÉFONO DEL DÍA:

E-MAIL ADDRESS:

SU CORREO ELECTRONICO:

## Section 2 (Seccion 2) Business Information (Información para el Negocio)

BUSINESS NAME:

NOMBRE DEL NEGOCIO:

Email Address:

SU CORREO ELECTRONICO:

OWNER'S FULL NAME:

EL NOMBRE COMPLETO DEL DUEÑO:

OWNER'S/BUSINESS PHONE #:

NUMERO DE TELEFONO DEL NEGOCIO:

BUSINESS STREET ADDRESS:

DIRECCIÓN DEL NEGOCIO:

CITY:

CIUDAD:

STATE:

DC

ESTADO:

ZIP CODE:

CÓDIGO POSTAL:

TYPE OF BUSINESS:

TIPO DE NEGOCIO:

## Section 3 (Seccion 3) Employment Information (Información de Empleo)

DATE HIRED:

FECHA CONTRATADO:

TERMINATION DATE:

FECHA DE TERMINACIÓN:

LAST DAY WORKED:

ÚLTIMO DÍA DE TRABAJO:

DID YOU QUIT?

No

RENUNCIÉ?

IF YES, WHY?(EN CASO AFIRMATIVO, ¿POR QUE? )

IF YES, WHY?( EN CASO AFIRMATIVO, ¿POR QUE?)

WERE YOU TERMINATED? No ▾

ME DESPIDIERON?

STILL EMPLOYED? No ▾

TODAVIA SOY EMPLEADO/A?

(Check only the box that applies to your current employment status with this company.)

(Marque la casilla que se aplica a su actual situación con esta compañía—no más de una casilla.)

PAY RATE: \$

ULTIMO SALARIO: \$

PER HOUR? No ▾

POR HORA?

PER DAY?

No ▾

POR DÍA?

PER WEEK? No ▾

POR SEMANA?

WHAT TYPE OF WORK DID YOU DO FOR THIS COMPANY?

¿QUÉ TIPO DE TRABAJO HICISTE PARA ESTA EMPRESA?

STREET ADDRESS IN DC WHERE THE WORK WAS PERFORMED:

DIRECCIÓN DONDE US. TRABAJÓ:

CITY:

CIUDAD:

STATE: DC ▾

ESTADO:

ZIP CODE:

CÓDIGO POSTAL:

FULL NAME OF YOUR SUPERVISOR:

NOMBRE COMPLETO DE SU SUPERVISOR:

WHAT DAY IS PAYDAY?

¿EL DÍA DE PAGO?

HOW OFTEN?

Weekly ▾

CUANTAS VECES POR MES?

WHEN DOES PAY PERIOD END?

¿FECHA FINAL DEL PERÍODO DE PAGO?

ARE YOU PAID BY CHECK, IN CASH OR BOTH?

RECIBIA EL PAGO CON CHEQUE, EN EFECTIVO O AMBOS?

HOW MANY EMPLOYEES WORK FOR YOUR EMPLOYER?

¿CUÁNTOS EMPLEADOS TRABAJAN PARA SU EMPLEADOR?

WHAT WAS YOUR WORK SCHEDULE?

CUAL FUE EL HORARIO DE TRABAJO? (i.e., Mon, Wed, Fri 10:00am to 4:30pm, Tue and Sat 9:30am to 8:00 pm with 30 min lunch break)

Is the business closed or in bankruptcy?

Esta cerrado el negocio o bancarrota?

No ▾

Were you hired to work as a subcontractor or an independent contractor?

¿Se le contrató para trabajar como subcontratista o un contratista independiente?

No ▾

Were you self-employed?

Trabaja por su propia cuenta?

No ▾

Did you file a court case for these unpaid wages?

¿Archivó una acción en la Corte por sueldos impagados?

No ▾

Were you an officer of the corporation, or a partner in the business?

Ha sido un funcionario de la corporacion o un social en el negocio?

No ▾

Do you have any equipment belonging to this employer?

¿Ud. tiene algún equipo de herramienta que pertenezca a su empleador?

No ▾



Do you have any outstanding loan balances due your employer? ¿Usted tiene algún tipo de préstamo que le debe a su empleador?		No <input type="button" value="v"/>	If so, how much? \$ <input style="width: 100px;" type="text"/> Si es así, ¿cuánto?
<b>TYPE OF COMPLAINT YOU ARE FILLING:</b> TIPO DE RECLAMO QUE PRESENTA:			
Final wages: Pago final:	No <input type="button" value="v"/>		
Commissions: Comisiones:	No <input type="button" value="v"/> If yes Amount of Commission <input style="width: 100px;" type="text"/> Si es así, cuanto \$ (You must attach a copy of employer's commission plan)(Debe presentar una copia del plan de la commission del empleador)		
Bad check: Cheques sin fondos:	No <input type="button" value="v"/> If yes, indicate amount \$ <input style="width: 100px;" type="text"/> Si es sí, indique cuanto \$	Check # <input style="width: 100px;" type="text"/> Numero del cheque	Date of Check <input style="width: 100px;" type="text"/> Fecha del cheque (You must attach a copy of the bad check) (Debe presentar una copia del cheque sin fondo)
Vacation pay: Pago de vacaciones	No <input type="button" value="v"/>	Hours <input style="width: 50px;" type="text"/> (Horas):	Rate of Pay <input style="width: 50px;" type="text"/> (Tasa de pago):
Owed <input style="width: 50px;" type="text"/> (Le debe)			
Unauthorized deductions: No <input type="button" value="v"/> (You must attach a copy(ies) of pay stub(s) showing the deduction(s)) Deducciones no autorizadas: (Debe presentar una copia de las colias demostrando la deducción)			
Living Wage(Salario): No <input type="button" value="v"/>		Enhanced Professional Security Act: No <input type="button" value="v"/>	
<b>LIST THE DAYS WHICH YOU WORKED AND HAVE NOT BEEN PAID:</b> HAGA UNA LISTA DE LAS FECHAS QUE TRABAJÓ SIN PAGO:			
PLEASE LIST WAGES OWED BY DATE: <input type="checkbox"/> DATE <input type="checkbox"/> WEEK ENDING <input type="checkbox"/> PAY PERIOD ENDING OR <input type="checkbox"/> PAY DAY (CHECK ONE): LAS FECHAS REPRESENTAN: FINAL DE SEMANA PAGO FINAL PERÍODO O DÍA DE PAGO (MARQUE UNO):			
Date(Fecha)	Hours(Horas)	Rate of Pay(Tasa de pago)	Owed(Le debe)
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
<input style="width: 100px;" type="text"/>	<input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>
ARE YOU OWED TIPS? No <input type="button" value="v"/> ¿Le deben propinas?		FOR WHAT TIME PERIOD WERE YOU NOT PAID YOUR WAGES <input style="width: 100px;" type="text"/> to <input style="width: 100px;" type="text"/>	TOTAL TIPS OWED \$ <input style="width: 100px;" type="text"/> Propinas totales debidas

HAVE YOU RECEIVED ANY ADVANCES ON THE WAGES DUE ?:

No ▾

¿HAS RECIBIDO ALGÚN AVANCE EN LAS PROPINAS?

IF YES, HOW MUCH? \$

CANTIDAD DE ADELANTO RECIBIDO? \$

GROSS AMOUNT OF UNPAID WAGES YOU CLAIM? \$

EL MONTO TOTAL DE LOS SUELDOS NO PAGADOS A RECLAMAR? \$

HAVE YOU DEMANDED YOUR UNPAID WAGES?

No ▾

¿HA HECHO UNA PETICIÓN PARA SUS SUELDOS IMPAGADOS A SU EMPLEADOR?

WHAT REASON DID EMPLOYER GIVE FOR NOT PAYING YOU?

¿QUÉ RAZÓN DIO EMPLEADOR PARA NO PAGARLE?

Additional Notes(Notas adicionales)

Under penalty of perjury, I swear that the information I have given on this complaint form is true and accurate. I authorize the Office of Wage-Hour to release any and all information contained in my complaint file to my employer, to investigate my claim, and take any action deemed necessary to resolve the claim. I further authorize the Office of Wage-Hour to mail all wages due me at my request.

Bajo pena de perjurio, yo certifico que el reclamante nombrado arriba requiere asistencia a causa de incapacidad o incapacidad a leer o escribir, me autorizo a completar este formulario de reclamo de salario para el/ella. Si el reclamante no pudo firmar este formulario, yo he imprimido el nombre completo del reclamante en la línea de signatorio seguida por mis iniciales.

Signature(SU FIRMA):

ELECTRONIC SIGNATURE REQUIRED(ninguna firma fotocopiada es aceptada)

Date(FECHA):

☐ Did anyone assist you with this claim?

Electronic Signature of Assistant(Firma del Asistente):

Date(Fecha):

NOTARIZED ASSIGNMENT TO (originals only):  
D.C. DEPARTMENT OF EMPLOYMENT SERVICES  
OFFICE OF WAGE-HOUR

4058 MINNESOTA AVENUE, N.E., SUITE 4300 WASHINGTON, D.C. 20019 Phone: (202) 671-1880 Fax: (202) 673-6411

Save

# Sample Order

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

Office of Labor Standards, Seattle Office  
for Civil Rights,

Charging Party,

vs.

Respondents.

CASE NO. SOCR15MW\_\_\_\_  
SOCR15WT\_\_\_\_

ORDER

**Order**

Pursuant to the Notice of Violation of the XX provisions of the Wage and Tip Compensation Requirements ordinance, referred to as the Administrative Wage Theft ordinance - Seattle Municipal Code (SMC) Chapter 14.20, Minimum Wage ordinance - SMC Chapter 14.19 issued on July 29, 2015, the Division Director orders the following remedies.

**Back Wages**

Total gross payments of \$\_\_\_\_\_ are due to Respondents' former Seattle employees. Respondents shall issue checks payable to the following employees in the following amounts and deliver them to OLS within 20 days of receiving this order:

Employee Name	Amount Owed
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

1  
2 Penalties

3 Due to Respondents' failure to pay wages to \_\_\_\_ employees as a first violation of the  
4 Minimum Wage and Administrative Wage Theft ordinances, Seattle Municipal Code  
5 Chapters 14.19 and 14.20, the Division Director imposes a penalty in the amount of  
6 \$\_\_\_\_ for the first violation of the Ordinances.<sup>1</sup>

7 Respondents shall issue a check payable to the City of Seattle in the amount of \$\_\_\_\_  
8 and deliver it to OLS within 20 days of receiving this order.

9 PROCESS

10 Respondents have 15 days from receiving this Division Director's Order to appeal the  
11 remedies issued by making a written request for a contested hearing before the Seattle  
12 Hearing Examiner.<sup>2</sup> If Respondents fail to file such appeal, the Division Director's Order  
13 will be final and enforceable. Interest will continue to accrue on the amounts Ordered at  
14 a rate of 12 percent per annum, calculated monthly.

15 If Respondents fail to pay the full remedy defined in this Division Director's Order within  
16 20 days of receiving the Order, OLS will pursue recovery of the listed amounts, plus  
17 attorney's fees and costs through any means available.

18 Please contact Cailin Dejillas, Lead Investigator, at 206-684-0454 with any questions.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Dylan Orr, Division Director  
Office of Labor Standards  
Seattle Office for Civil Rights

<sup>1</sup> SMC 14.19.060(F)(3); SMC 14.20.070(D)(4).

<sup>2</sup> For more information, call the Hearing Examiner at 206-684-0521 or <http://www.seattle.gov/examiner/>.

# Sample Instructions for Recording Final Order

## **Recording Your Final Order**

- 1) After receiving a copy of your Final Order in the mail, visit the Clerk of Courts Code Enforcement Office to obtain a certified copy of your Final Order.

Clerk of Courts Code Enforcement Office  
111 NW First Street, Suite 1750  
Miami, Florida 33128  
Telephone: 305-375-2333  
Hours: Monday thru Friday, 9:00 AM – 4:00 PM

Fees: \$2.00 per page

\*The Clerk of Courts Code Enforcement Office accepts cash, credit/debit card, or money order/cashier's check. The Office does not accept personal checks.

- 2) File the certified copy of your Final Order with the County Recorder's Office.

### **Online**

You can eRecord your document through one of the Clerk of Courts approved vendors. To find a list of approved vendors, visit:

<http://www.miami-dadeclerk.com/eRecording.asp>

### **In Person**

22 NW 1<sup>st</sup> Street 1<sup>st</sup> Floor  
Miami, FL 33128  
Monday – Friday, 9:00 AM – 4:00 PM

### **By Mail**

Miami Dade County Recorder  
P.O. Box 011711  
Flagler Station  
Miami, Florida 33101

### **Fees**

Recording: fees are \$10 for the 1st page and \$8.50 for every page thereafter  
Copy \$1.00 per page  
Certification \$2.00 per document  
Search Fee \$2.00 per name per year

The County Recorder's Office accepts cash, credit/debit card, or money order/cashier's check. The Recorder's Office does not accept personal checks

**Documents submitted for recording by mail or in person without a self-addressed stamped envelope will not be processed.**

- 3) Notify Consumer Protection once the Respondent satisfies the judgment, either by paying the amount due the Petitioner per the Final Order or any other amount the Petitioner is willing to accept to satisfy the terms of the Final Order. The Department will issue a Satisfaction of Judgment/Final Order upon receipt of: 1) a notarized affidavit or other sworn document signed by Petitioner attesting the judgment amount has been satisfied; and 2) any and all fees administrative fees due the County from the Respondent in connection with the wage theft hearing conducted in your case.

For more information about the County Recorder's Office, visit:  
[http://www.miami-dadeclerk.com/library/county\\_recorder/985-Web.pdf](http://www.miami-dadeclerk.com/library/county_recorder/985-Web.pdf)

# Sample Checklist for “Economic Realities Test”



## Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the meaning of "employment relationship" and the significance of that determination in applying provisions of the Fair Labor Standards Act (FLSA).

### Determining Whether an Employment Relationship Exists: Is a Worker an Employee or Independent Contractor?

In order for the FLSA's minimum wage and overtime provisions to apply to a worker, the worker must be an "employee" of the employer, meaning that an employment relationship must exist between the worker and the employer. The FLSA defines "employ" as including to "suffer or permit to work", representing the broadest definition of employment under the law because it covers work that the employer directs or allows to take place. Applying the FLSA's definition, workers who are economically dependent on the business of the employer, regardless of skill level, are considered to be employees, and most workers are employees. On the other hand, independent contractors are workers with economic independence who are in business for themselves.

A number of "economic realities" factors are helpful guides in resolving whether a worker is truly in business for himself or herself, or like most, is economically dependent on an employer who can require (or allow) employees to work *and* who can prevent employees from working. The Supreme Court has indicated that there is no single rule or test for determining whether an individual is an employee or independent contractor for purposes of the FLSA. The Court has held that the totality of the working relationship is determinative, meaning that all facts relevant to the relationship between the worker and the employer must be considered.

While the factors considered can vary, and while no one set of factors is exclusive, the following factors are generally considered when determining whether an employment relationship exists under the FLSA (*i.e.*, whether a worker is an employee, as opposed to an independent contractor):

- 1) The extent to which the work performed is an integral part of the employer's business.** If the work performed by a worker is integral to the employer's business, it is more likely that the worker is economically dependent on the employer and less likely that the worker is in business for himself or herself. For example, work is integral to the employer's business if it is a part of its production process or if it is a service that the employer is in business to provide.
- 2) Whether the worker's managerial skills affect his or her opportunity for profit and loss.** Managerial skill may be indicated by the hiring and supervision of workers or by investment in equipment. Analysis of this factor should focus on whether the worker exercises managerial skills and, if so, whether those skills affect that worker's opportunity for both profit and loss.

**3) The relative investments in facilities and equipment by the worker *and* the employer.** The worker must make some investment compared to the employer's investment (and bear some risk for a loss) in order for there to be an indication that he/she is an independent contractor in business for himself or herself. A worker's investment in tools and equipment to perform the work does not necessarily indicate independent contractor status, because such tools and equipment may simply be required to perform the work for the employer. If a worker's business investment compares favorably enough to the employer's that they appear to be sharing risk of loss, this factor indicates that the worker may be an independent contractor.

**4) The worker's skill and initiative.** Both employees and independent contractors may be skilled workers. To indicate possible independent contractor status, the worker's skills should demonstrate that he or she exercises independent business judgment. Further, the fact that a worker is in open market competition with others would suggest independent contractor status. For example, specialized skills possessed by carpenters, construction workers, and electricians are not themselves indicative of independent contractor status; rather, it is whether these workers take initiative to operate as independent businesses, as opposed to being economically dependent, that suggests independent contractor status.

**5) The permanency of the worker's relationship with the employer.** Permanency or indefiniteness in the worker's relationship with the employer suggests that the worker is an employee, as opposed to an independent contractor. However, a worker's lack of a permanent relationship with the employer does not necessarily suggest independent contractor status because the impermanent relationship may be due to industry-specific factors, or the fact that an employer routinely uses staffing agencies.

**6) The nature and degree of control by the employer.** Analysis of this factor includes who sets pay amounts and work hours and who determines how the work is performed, as well as whether the worker is free to work for others and hire helpers. An independent contractor generally works free from control by the employer (or anyone else, including the employer's clients). This is a complex factor that warrants careful review because both employees and independent contractors can have work situations that include minimal control by the employer. However, this factor does not hold any greater weight than the other factors. For example, a worker's control of his or her own work hours is not necessarily indicative of independent contractor status; instead, the worker must control meaningful aspects of the working relationship. Further, the mere fact that a worker works from home or offsite is not indicative of independent contractor status because the employer may exercise substantial control over the working relationship even if it exercises less day-to-day control over the employee's work at the remote worksite.

There are certain factors which are immaterial in determining the existence of an employment relationship. For example, the fact that the worker has signed an agreement stating that he or she is an independent contractor is not controlling because the reality of the working relationship – and not the label given to the relationship in an agreement – is determinative. Likewise, the fact that the worker has incorporated a business and/or is licensed by a State/local government agency has little bearing on determining the existence of an employment relationship. Additionally, the Supreme Court has held that employee status is not determined by the time or mode of pay.

## **Requirements Under the FLSA**

When an employer-employee relationship exists, and the employee is engaged in work that is subject to the FLSA, the employee must be paid at least the [Federal minimum wage](#) of \$7.25 per hour, effective July 24, 2009, and in most cases [overtime](#) at time and one-half his/her regular rate of pay for all hours worked in excess of 40 per week. The FLSA also has [youth employment](#) provisions which regulate the employment of minors under the age of eighteen, as well as [recordkeeping](#) requirements.

## **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website:**  
<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline,  
**available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

# Sample Workplace Poster



# Seattle's Minimum Wage: Effective January 1, 2016

## MINIMUM WAGE

(SMC 14.19)

### LARGE EMPLOYERS (501 or more employees)

Does employer pay towards medical benefits\*?

NO

YES

**\$13.00/hour**

**\$12.50/hour**

### SMALL EMPLOYERS (500 or fewer employees)

Does employer pay \$1.50/hour towards medical benefits\* and/or does employee earn \$1.50/hour in tips?

NO

YES

**\$12.00/hour**

**\$10.50/hour**

\*Medical benefits must be silver level or higher under Affordable Care Act

## WAGE THEFT

(SMC 14.20)

### FAILURE TO PAY WAGES & TIPS OWED

Wage theft is not receiving full payment for your work.

- Not being paid minimum wage
- Not being paid for overtime.
- Working off the clock.
- Not being paid at all.
- Not being paid the amount promised.

Employers must give employees written information at hire and change of employment.

- Employer contact information
- Rate(s) of pay
- Gross wages
- Tip policies and payments
- Deductions
- Pay day and pay basis

Ordinance requirements and remedies for noncompliance may change in early 2016 due to pending legislation. Contact OLS for more information.

Information about these laws must be provided in English, Spanish, and any other languages commonly spoken by employees.

### ⚠ WORKERS CAN FILE A COMPLAINT WITH THE OFFICE OF LABOR STANDARDS IF THEY:

Do not receive the minimum wage.

Do not receive payment of wages and tips.

Do not receive written information about wages and tips.

Experience retaliation.

FOR MORE INFORMATION

[seattle.gov/laborstandards](http://seattle.gov/laborstandards)

(206) 684-4500

Stephen and Sandra  
**SHELLER**



**CENTER** *for* **SOCIAL JUSTICE**



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