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Ord. #5478

AN ORDINANCE AMENDING TITLE 6, BUSINESS LICENSES AND REGULATION, OF THE MEMPHIS, TENNESSEE, CODE OF ORDINANCES TO ADD CHAPTER 105 PROHIBITING WAGE THEFT, PROVIDING ADMINISTRATIVE PROCEDURES FOR WAGE THEFT, AND ALLOWING SHELBY COUNTY GOVERNMENT TO IMPOSE PENALTIES AGAINST THOSE EMPLOYERS FOUND GUILTY OF WAGE THEFT

WHEREAS, national and local studies report that wage theft is a pervasive problem that disproportionately affects low-wage workers; and

WHEREAS, a 2006 national study of day laborers, that included hundreds of interviews with day laborers in San Francisco, conducted by the University of California, Los Angeles, University of Illinois, and New School University, found that one out of every two day laborers experienced wage theft in the two months prior to be surveyed; and

WHEREAS, the National Employment Law Project (NELP) stated in their recent manual entitled *An Advocate's Guide to State and City Policies to Fight Wage Theft*, "Wage theft is not incidental, aberrant or rare, or committed by a few rogue employers at the periphery of the labor market. It takes place in industries that span the economy-including retail, restaurants and grocery stores; caregiver industries such as home health care and domestic work; blue collar industries such as manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes, and beauty and nail salons;" and

WHEREAS, recent incidents of wage theft in Memphis and Shelby County have highlighted the need for employee protection from employers with unscrupulous business practices; wage theft causes significant harm to our citizens; worker victims of wage theft cannot make ends meet individually or for their families, responsible businesses face unfair competition from employers paying below legal wages, and our government loses significant tax revenue during a time of large annual budget deficits; and

WHEREAS, the City Council and County Commission recognize the need for groundbreaking legislation to improve working standards for low-wage workers; local ordinances can further improve the welfare and treatment of employees in the community; and

WHEREAS, encouraging greater compliance with wage laws benefits all workers by ensuring a level playing field in the labor market and benefits the businesses that already comply with these laws; and

WHEREAS, individuals affected by wage theft are often among the most vulnerable in our community and without access to sufficient resources and time with which to appeal for their unpaid wages; and

WHEREAS, Memphis and Shelby County find it necessary and appropriate to create a stronger disincentive for employers to violate wage and hour laws.

NOW, THEREFORE, BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL, that Title 6, Business Licenses and Regulations, of the Memphis, Tennessee, Code of Ordinances is hereby amended to add the following Chapter:

Chapter 6-105. Wage Theft

Sec. 6-105-1. Definitions

(a) *Employee* shall mean a natural person who performs work within the geographic boundaries of Memphis and Shelby County, Tennessee while being employed by an employer, but shall not include any bona fide independent contractor.

(b) *Employer* shall include any person who, acting either individually or as an officer, agent, or employee of another person, acts directly or indirectly in the interest of a person or entity within Memphis and Shelby County, Tennessee but does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) The State of Tennessee;
- (3) Shelby County; or
- (4) The City of Memphis.

(c) The meaning of *employ*, including as used in the term employment, shall include to suffer or permit to work.

(d) *Independent contractor* shall have the same meaning as defined in the Internal Revenue Code and implementing federal law.

(e) *Wage rate* shall mean any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether daily or hourly but in all cases shall be equal to no less than the highest applicable rate established by operation of any federal, state or local law.

(f) *Reasonable time* shall be presumed to be no later than 14 calendar days from the date on which the work is performed but may be modified for a period not to exceed 30 days by an express agreement between the employer and the employee which has been reduced to writing and signed by the employee.

(g) *Threshold amount* shall mean one hundred dollars (\$100).

Sec. 6-105-2. Wage Theft Violations

(a) **Wage Theft Defined.** Wage theft occurs when employers do not pay workers the wages to which the workers are legally entitled, either by agreement or under applicable law. It includes but is not limited to failing to timely pay a worker at all; failure to pay the agreed upon amount; failure to pay the minimum required by applicable law; requiring the worker to work "off the clock," or to pay back to the employer all or part of the wages provided; disallowing break times required by law; or failure to pay overtime as required by law.

(b) **Actions Prohibited.** It shall be a violation of this ordinance to commit wage theft. It shall also be a violation of this ordinance to retaliate against an employee for reporting or complaining about wage theft by deliberately taking or threatening direct or indirect adverse employment action against such employee or immediate relative of such employee.

Sec. 6-105-3. Procedures For Wage Theft Complaint

(a) **Generally.** Any person or organization may file a written, signed complaint with the Administrator of the Shelby County Office of Equal Opportunity Compliance ("EOC Administrator"). Such complaint must allege a wage theft violation in excess of the threshold amount. The EOC Administrator may establish detailed procedures for filing and processing complaints, consistent with the terms of this ordinance.

(b) **Timing.** Such complaint must be filed no later than 1 year after the last date upon which the employee performed the relevant work for the employer.

(c) **Sufficiency of Complaint.** The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent or respondents and for the EOC Administrator to determine both that an allegation of wage theft has been made and that the threshold amount has been met.

(d) **Jurisdictional Screening.** Upon the filing of any complaint, the EOC Administrator shall promptly determine whether the wage theft complaint alleges wage theft, names a proper respondent, and meets the threshold amount criterion. If the complaint fails to meet these jurisdictional criteria, the EOC Administrator may dismiss the complaint. If the complaint meets these jurisdictional criteria, the EOC Administrator shall serve written notice on the complainant and respondent, setting forth the allegations, rights and obligations of the parties. The EOC Administrator shall either dismiss or serve notice pursuant to this paragraph within 15 days of receipt of the complaint.

(e) **Conciliation.** The EOC Administrator shall wherever practicable attempt conciliation of the matter by contacting the respondent and offering to mediate the dispute. Absent extraordinary circumstances, the conciliation process shall take place and conclude either successfully or unsuccessfully within 60 days of the filing of the complaint. A successful mediation should result in a written agreement between the parties which would be enforceable in court. Failure to abide by a settlement agreement shall be an independent violation of this Ordinance.

(f) **Citation.** If mediation is unsuccessful, the EOC Administrator shall investigate the complaint and make a determination of cause. If the EOC Administrator determines the complaint is without cause, he shall so notify the parties. If the EOC Administrator determines the complaint is with cause, he shall issue a citation to the respondent citing the respondent to appear in Division XIV of the General Sessions Court of Shelby County ("Court"). The EOC Administrator shall make such a determination within 90 days of the filing of the complaint. If the parties thereafter notify the EOC Administrator that they have reached a successful settlement of the dispute, the EOC Administrator may in his discretion so notify the court and request dismissal. No statement made in the course of mediation may be used by the parties thereafter in court against the party making the statement.

(g) **Remedies.** The Court shall make necessary findings regarding the ordinance violation. Violations of any provisions of this article shall constitute an offense punishable by a fine of \$50.00 for each violation. Each day for which work was performed but full payment not timely rendered shall constitute a separate violation. Fines shall be capped at an amount equal to three times the amount of wages owed. The Court may further order appropriate remedies at its discretion. Remedies may

include an order of restitution for the amount owed; reasonable interest accrued on said amount; appropriate injunctive relief; and reasonable costs and fees.

Sec. 106-5-4. Termination of Administrative Review

(a) If during the pendency of a wage theft violation complaint a claimant employee, or the State of federal Department of Labor on behalf of the claimant employee, brings a private action, whether under state law, federal law, or both, in any state or federal court to seek unpaid wages based upon the same facts and allegations as the claimant employee's complaint to the County, or the claimant employee affirmatively or by consent opts to participate in any such litigation, that claimant employee's complaint of wage theft shall be deemed withdrawn with respect to any respondent employer named as a defendant in such court action. This section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of a complaint employee's complaint. The County shall so notify the parties.

(b) **Cumulative Rights Preserved.** Nothing in this article shall be construed to limit, preclude or in any way abrogate the cumulative rights or remedies available to employees at common law or by other statute which were not the subject of a claimant employee's complaint or the County's enforcement actions.

SECTION 2. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this ordinance shall take effect on the later of after it is passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the comptroller and become effective as otherwise provided by law.

MYRON LOWERY
Council Member

BILL MORRISON
Council Chairman

Attest:
Patrice Thomas, Comptroller

THE FOREGOING ORDINANCE # 5478 PASSED

1st Reading 11-20-12

2nd Reading 12-4-12

3rd Reading 2-5-13

Approved _____
Chairman of Council

Date Signed: _____

Approved: _____
Mayor, City of Memphis

Date Signed: _____

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Dropped
Comptroller