

Guidance for employers on Minnesota's new Wage Theft Law

The Minnesota Legislature passed and the governor has signed a new Minnesota Wage Theft Law. The new law amends existing state labor laws and provides for new wage and hour requirements, protections and sanctions. This guidance highlights provisions of the new law that will require employers to review their current policies and practices and take necessary steps to bring those policies and practices into compliance with the requirements of the new law's provisions.

All provisions of the new law go into effect **July 1, 2019**, except for the provisions of the new law that amend Minnesota Statutes § 609.52 (criminal wage theft and sanctions). The provisions of the new law providing for criminal wage theft and sanctions go into effect **Aug. 1, 2019**.

A full summary of the new Wage Theft Law is online at www.dli.mn.gov/sites/default/files/pdf/wage_theft_law_summary.pdf.

The complete text of the new law is online at www.revisor.mn.gov/laws/2019/1/Session+Law/Chapter/7/.

New responsibilities for employers

Additional information employers are required to provide to employees when they start work (amendments to Minn. Stat. § 181.032)

Providing written notice to employees about their employment status and terms of employment, including wages, hours and benefits, is not only a good business practice, it is also required by Minnesota law.

The new Wage Theft Law requires all employers to provide each employee with a written notice at the start of their employment. The notice must contain the following specific information about an employee's employment status and terms of employment (New).

Below is the specific information employers must provide in the notice to employees when they start employment.^{1, 2, 3}

- **Employee's employment status and whether an employee is exempt from minimum wage, overtime and other state wage and hour laws, and on what basis (New).**

¹When recruiting migrant workers, employers must also comply with the notice, recordkeeping, and wage and hour requirements of Minn. Stat. §§ 181-85-181.91.

²Employers in the meatpacking industry must also comply with the notice requirements of Minn. Stat. § 179.86.

³Employers employing 10 or more employees, who are not farm laborers or casual employees employed temporarily, must also comply with the written agreement requirements of Minn. Stat. § 181.55-181.57.

- Number of days in the employee's pay period and the regularly scheduled payday **(New)**.
- Date the employee will receive the first payment of wages earned **(New)**.
- Employee's rate or rates of pay and the basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other method and the specific application of any additional rates **(New)**.
- Allowances, if any, that may be claimed for permitted meals and lodging **(New)**.
- Provision of paid vacation, sick time or other paid time off (PTO), how the paid time off will accrue and terms for its use **(New)**.
- A list of deductions that may be made from the employee's pay **(New)**.
- Employer's legal name and the operating name, if different **(New)**.
- Physical address of employer's main office or principal place of business and a mailing address, if different **(New)**.
- Employer's telephone number **(New)**.

Employers are required to keep a copy of the notice signed by each employee **(New)**. All employers must provide the notice to employees in English. The notice must include a statement, in multiple languages, that informs employees they may request the notice be provided to them in another language **(New)**. The employer must provide the notice in another language if requested by the employee **(New)**. The Department of Labor and Industry (DLI) is preparing and will make available to employers the statement in multiple languages that must be included with the notice. Employers are also required to provide employees in writing any changes to the information in the notice before the date the changes take effect **(New)**.

Additional information employers are required to provide employees on earnings statements (amendments to Minn. Stat. § 181.032)

Earnings statements (or paystubs) are important payroll records for employers and employees that document information about wages paid, hours worked, deductions made and benefits accrued by an employee. Existing state law requires earning statements be provided to employees in writing or by electronic means at the end of each pay period and specific information be included on the earnings statement. The new law requires the following additional information be included on the earnings statements provided to employees each pay period:

- Name of the employee.
- Total hours worked by the employee in the pay period.
- **Employee's rate or rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other method (New).**
- **Allowances claimed for permitted meals and lodging (New).**
- Total amount of gross pay earned by employee in the pay period.
- Net amount of pay after all deductions are made.
- List of deductions made from the employee's pay.
- Date pay period ended.
- Employer's legal and operating name.
- **Employer's telephone contact (New).**

- **Physical address of employer's main office or principal place of business and a mailing address, if different (New).**

Additional records employers are required to maintain (amendments to Minn. Stat. § 177.30)

Under existing law, employers are required to keep various records for three years. It is in the employer's interest to maintain complete and accurate records that can be used to demonstrate an employer's compliance with state wage and hour laws. The new law requires the following additional records be kept by an employer:

- Each employee's name, address and occupation.
- Each employee's rate of pay and the amount paid each pay period.
- Each employee's hours worked each day and each workweek, **including, for all employees paid at piece rate, the number of pieces completed at each piece rate (New).**
- **A list of personnel policies with brief descriptions of each policy that were provided to each employee, including the date the policies were given to the employee (New).**
- **A copy of the new notice that is required to be provided to and signed by each employee at the start of employment and a copy of any written changes to the notice that were provided to each employee (New).**
- For each employer subject to Minn. Stat. §§ 177.41 to 177.44 (Minnesota Prevailing Wage Act), and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks specifying for each employee: name; identifying number; prevailing-wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension and other benefit programs.
- Other information the commissioner finds necessary and appropriate to enforce Minn. Stat. §§ 177.21 to 177.435.

These and other records that are required to be kept by an employer must be available for inspection by the commissioner upon demand. **The records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with the commissioner's demand within 72 hours (New).**

If records maintained by the employer do not provide sufficient information to determine the exact amount of back wages due, the commissioner may make a determination of wages due based on available evidence (New).

Clarifications and requirements for what wages and commissions an employer must pay and when employers must pay wages and commissions to employees (amendments to Minn. Stat. § 181.101)

Employers must pay all wages, including salary, earnings and gratuities (New) earned by an employee at least once every 31 days and all commissions earned by an employee at least once every three months (New) on a regular payday.

The new Wage Theft Law further clarifies that Minn. Stat. § 181.101 provides a substantive right to the payment of commissions and wages, at the employee's rate or rates of pay or the rate or rates required by law, whichever is greater, as well as the right to be paid wages and commissions earned on a regular pay day (New).

New: Employers must not retaliate against employees for asserting rights or remedies under Minnesota's wage and hour laws (amendments to Minn. Stat. § 181.03)

An employer is prohibited from retaliating against an employee for asserting rights or remedies under the Minnesota Fair Labor Standards Act, the Minnesota Prevailing Wage Act and certain provisions of Minn. Stat., Chapter 181, Payment of Wages Act, including filing a complaint with DLI or telling the employer of the employee's intention to file a complaint. In addition to any other remedies provided by law, an employer who violates this subdivision is liable for a civil penalty of \$700 to \$3,000 for each violation.

Requirements for employers under the Responsible Contractor Law (amendments to Minn. Stat. § 16C.285)

The "responsible contractor" requirements have been amended to include Minn. Stat. §§ 181.03 (prohibited wage practices and retaliation), 181.101 (payment of wages) and 609.52, subd. 2 (19) (criminal wage theft) (New), in the list of laws that contractors must verify they are in compliance with and have not violated during the past three years, to be considered eligible to bid on public contracts.

New enforcement authority and penalties

New: DLI has additional enforcement and penalty authority for violations of the law (amendments to Minn. Stat. §§ 175.20, 177.27, 177.30 and 181.101)

The application of remedies under existing law was clarified and penalty amounts were increased for repeated violations of the recordkeeping laws. The commissioner's enforcement authority was also clarified and expanded.

Commissioner enforcement authority

- Enter and inspect places of employment without unreasonable delay to carry out purposes of Minn. Stat., Chapters 177, 181, 181A and 184.

- Apply for an inspection order in district court in the county where the place of employment is located to require employer to permit entry of the commissioner or an authorized representative if the entry has been denied.
- Interview non-management employees in private regarding an investigation.

Clarification of application of remedies and increase in penalties for repeated violations

- For the failure to pay wages or commissions as required under Minn. Stat. § 181.101, the new law clarifies the commissioner may order the employer to:
 1. Pay wages or commissions owed to an employee.
 2. Pay an amount equal to the wages or commissions owed as liquidated damages.
 3. Pay compensatory damages incurred by an employee.
 4. Cease and desist in the violative practice.
 5. Pay a civil penalty for repeated or willful violations.

The commissioner may also now order an employer to pay a penalty equal to either the employee's average daily wages earned or an amount equal to 1/15 of the commissions earned for each day payment is not made in accordance with the commissioner's order.

- Penalize an employer up to \$5,000 for each repeated failure to submit or deliver records to the commissioner as required by law.
- Penalize an employer up to \$5,000 for each repeated failure to keep and maintain records as required by law.

New: Commissioner required to share enforcement action information (amendments to Minn. Stat. § 177.27)

DLI, its commissioner or its authorized representative shall provide a copy of an order to comply issued to an employer and the disposition of the order or the data set out in the order to comply and its disposition to the following entities:

- A licensing or regulatory authority of one or more state agencies or agencies of political subdivision to which the employer is subject.
- A public contracting authority with which the employer is party to a public contract.
- The employees whose interests are affected by the order.

New: Attorney General enforcement authority (new Minn. Stat. §§ 177.45 and 181.1721)

The Minnesota Attorney General's Office, in addition to the Department of Labor and Industry, has the authority to enforce Minn. Stat., Chapters 177 (Minnesota Fair Labor Standards Act and Prevailing Wage Act) and 181 (Payment of Wages) under Minn. Stat. § 8.31.

Misdemeanor violations (amendments to Minn. Stat. § 177.32)

Under existing law, an employer found to have hindered or delayed the commissioner in the performance of duties required under the Minnesota Fair Labor Standards Act or the Prevailing Wage Act was guilty of a misdemeanor. **The new Wage Theft Law adds that any employer hindering or delaying the commissioner in the performance of duties required under Minn. Stat. §§ 181.01 to 181.723 or 181.79 is also guilty of a misdemeanor (New).**

New: Crime of “wage theft” and criminal sanctions for committing “wage theft” (amendments to Minn. Stat. § 609.52)

The crime of “wage theft” occurs when an employer, with intent to defraud:

- Fails to pay an employee all wages, salary, gratuities, earnings or commissions at the employee’s rate or rates of pay or at the rate or rates required by law, whichever is greater.
- Directly or indirectly causes any employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered.
- Directly or indirectly demands or receives from any employee any rebate or refund from the wages owed the employee under contract of employment with the employer.
- Makes or attempts to make it appear in any manner the wages paid to any employee were greater than the amount actually paid to the employee.

“Employer” is defined as “any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.”

“Employee” is defined as “any individual employed by an employer.”

“Wage theft” has been added to the criminal definition of theft under Minn. Stat. § 609.52, subd. 2(19), and sanctions for committing wage theft are as follows:

- Imprisonment for not more than 20 years, payment of a fine of not more than \$100,000 or both if the value of the wages stolen is more than \$35,000.
- Imprisonment for not more than 10 years, payment of a fine of not more than \$20,000 or both if the value of the wages stolen exceeds \$5,000.
- Imprisonment for not more than five years, payment of a fine of not more than \$10,000 or both if the value of wages stolen is more than \$1,000 but not more than \$5,000.
- Imprisonment for not more than one year, payment of a fine of not more than \$3,000 or both if the value of the property or services stolen is more than \$500 but not more than \$1,000.

When determining the value of the wages stolen, the law allows for the amount of employee wages that were stolen through wage theft to be aggregated within any six-month period.