



Labor standards in Minnesota

Sara Ellstra
Supervisor | Labor Standards

Housekeeping Items

*DLI's **mission** is to ensure Minnesota's work and living environments are equitable, healthy and safe.*

*DLI's **vision** is to be a trusted resource and an impartial regulator for employers, employees, property owners and other stakeholders.*

WEBINAR:

- This is a large audience
- Mics and Cameras are off
- If you have questions, please submit in the chat and we will get to as many as we can.
- Slides and recordings will be posted to the events page after the event - <https://www.dli.mn.gov/events>



Department of Labor and Industry operating areas

*DLI's **mission** is to ensure Minnesota's work and living environments are equitable, healthy and safe.*

*DLI's **vision** is to be a trusted resource and an impartial regulator for employers, employees, property owners and other stakeholders.*

DLI operating areas:

- Workers' Compensation
- Occupational Safety and Health (OSHA)
- Labor Standards
- Apprenticeship Minnesota
- Construction Codes and Licensing
- Minnesota Dual-Training Pipeline
- Youth Skills Training
- Office of Combative Sports
- General Support



Labor standards enforced by DLI

- Minnesota Fair Labor Standards Act
- Women's Economic Security Act
- Child Labor Standards Act
- Minnesota Prevailing Wage Act
- Wage Theft Prevention Act
- Other laws related to employment, wages, conditions, hours.



2023 legislative labor law changes

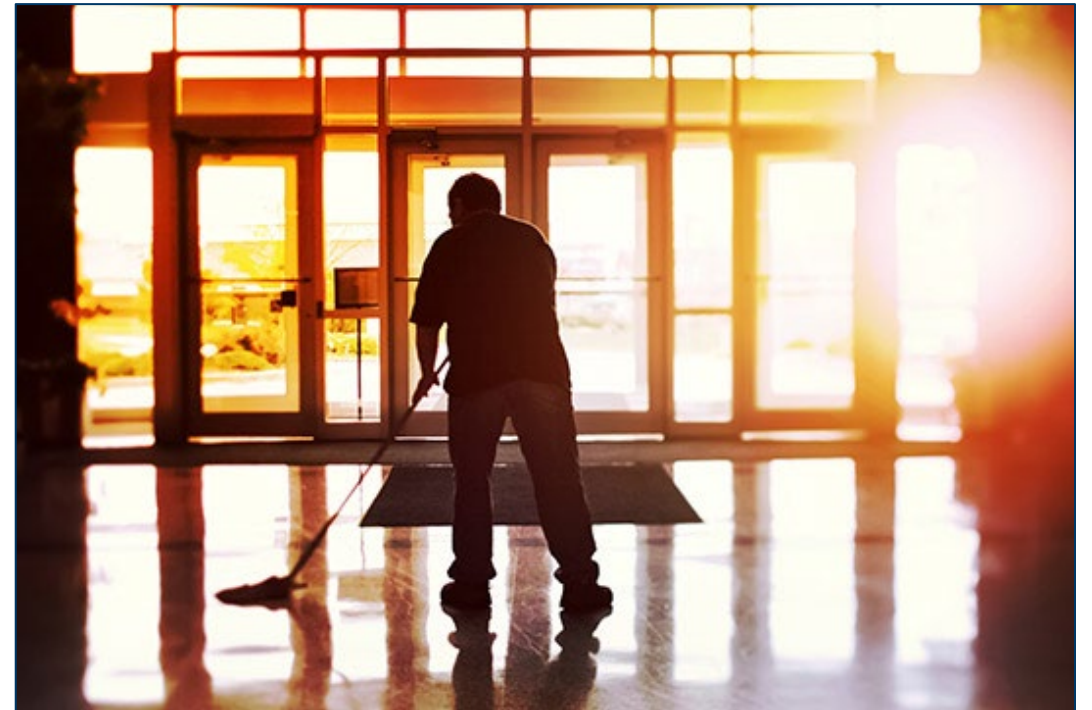
- Earned sick and safe time
- Pregnancy and nursing accommodations
- Family leave: paid and unpaid
- Warehouse worker safety
- Ergonomics program
- Workplace veterans poster
- Construction worker wage protection
- Restrictive franchise agreements
- Nursing Home Workforce Standards Board
- Packinghouse and food processing workers
- Other new labor requirements DLI will not enforce

Minnesota FLSA: Who is an employee for purposes of minimum wage and overtime?

Employee: Any individual employed by an employer.

Exceptions include (not exhaustive list):

- various agricultural workers
- those who meet tests for “executive, administrative, or professional” employees
- independent contractors
- 19+ exceptions (see Minnesota Statutes 177.23, Subdivision 7)



Executive, Administrative and Professional Exemptions

- Positions designated under one of these common exemptions must be paid a [guaranteed and predetermined weekly salary](#) and perform certain job duties to be exempt from Minnesota's overtime law. Paying an employee a salary or using a certain job title, such as supervisor, does not make a worker exempt without meeting the “duties tests.”
- Duties tests and salary amounts can be found in [Minnesota Rules 5200.0180](#) and:
 - Executive tests ([Minnesota Rules -- 5200.0190](#))
 - Administrative tests ([Minnesota Rules -- 5200.0200](#))
 - Professional tests ([Minnesota Rules -- 5200.0210](#))

Executive

Executive test I:

- at least \$250 per week in salary; manages the enterprise by which the person is employed or a recognized department or subdivision thereof; and customarily directs the work of two or more other employees.

Executive test II:

- receives at least \$155 per week in salary; manages and supervises a department of at least two other full-time people (a full-time employee is defined as one who works at least 35 hours in a workweek); has authority to hire or fire or suggest changes in employees' status; D. regularly exercises discretionary powers; and either:
 - (1) devotes less than 20 percent of time worked, or 40 percent in retail or service establishments, to nonexempt work; (2) owns 20 percent or more of the business; or (3) has sole charge of an independent or branch establishment.

Independent contractor misclassification

Misclassification definition

The practice of labeling workers as independent contractors instead of employees in order to avoid certain legal obligations, such as worker's compensation, tax obligations, and fair labor standards.



Minnesota's Labor Standards asks:

Does misclassification lead to a violation of the MFLSA or FLSA? (see MN Admin. Rules 5224.0330)

State law: Minimum wage

Employer/employee type	Minimum wage rate (2023)
Large employer: Any enterprise with annual gross revenues <i>of</i> \$500,000 or more	\$10.59 (2023) and \$10.85 (2024)/hour
Small employer: Any enterprise with annual gross revenues of less than \$500,000 Training wage: May be paid to employees aged 18 and 19 in the first 90 days of employment Youth wage: May be paid to employees aged 17 or younger	\$8.63(2023) and \$8.85 (2024)/hour
J-1 visa: May be paid to employees of hotels, motels, lodging establishments and resorts working under the authority of a summer work, travel exchange (J) visa	\$8.85/hour

*minimum wage adjusts Jan. 1 of each year.

Tipping



- Tips are the property of the employee directly serving the customer. Employers cannot require employees to share or pool their tips with other employees, except under certain limited-service situations.
- Employers may not count tips received by an employee toward the payment of minimum wage.
- For tips received through credit card, the full amount of tip must go to the employee minus only the percentage deducted from the tip in the same percentage the credit card company charges on the total bill. (example, usually no more than 3%)

Overtime

Minnesota law: Over 48 hours

However, DLI refers many overtime cases to the U.S. Department of Labor because the federal threshold is lower.

Federal law: Over 40 hours

This is a general guideline that applies in most situations. The U.S. Department of Labor should be contacted for further details.

State law: Deductions from wages

Allowed deductions from employees (direct or indirect):

- Written agreement to deduct insurance payments, union dues, retirement plans, organization or PAC contributions or savings plans
- Up to \$50 for uniform(s), equipment
- Consumables and travel expenses
- Limited meal credit: 60% of one hour of state minimum wage a day can be deducted from the minimum wage.
- Limited lodging credit: 75% of one hour of minimum wage a day can be deducted from the minimum wage.

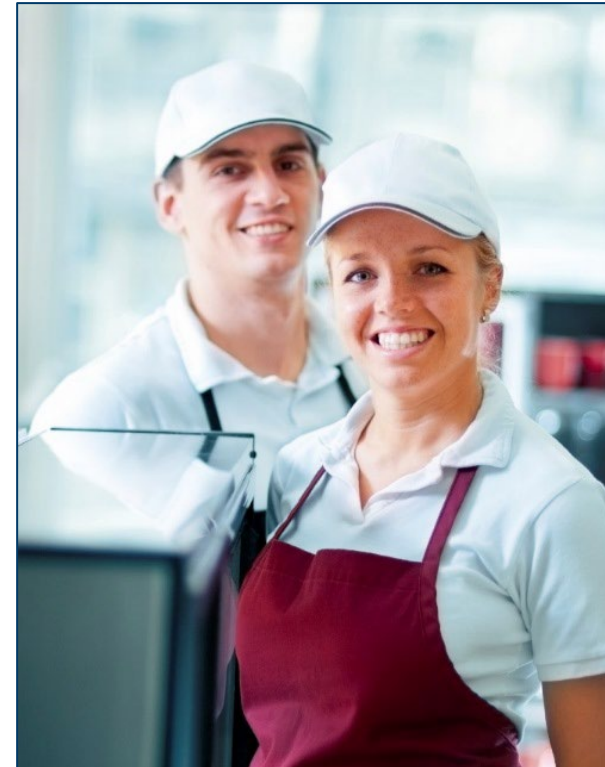
State law: Deductions from wages (cont.)

Allowed deductions from employees:

- Employee voluntarily authorizes the deduction in writing or held liable in court. Authorization must state the amount deducted each pay period.
- Purchase or loan: Authorization required, can be made prior to a purchase or loan.
- Deductions cannot bring the employee below the minimum wage.
- The employer must reimburse deductions upon separation.

State law: Hours worked

- The minimum wage must be paid for all hours worked.
- Hours worked include:
 - training time
 - call time
 - cleaning time
 - waiting time
 - travel time



Wage notice



Employee notice

1. Employee:	Address:
Phone number:	Email address:
Date employment began:	
2. Legal name of employer:	Main office/principal place of business address:
Phone number:	Email address:
Operating name of employer (if different):	
Mailing address (if different):	
3. Employment status (exempt or non-exempt):	
<input type="checkbox"/> Employee is exempt from: <input type="checkbox"/> minimum wage <input type="checkbox"/> overtime <input type="checkbox"/> other provisions of Minnesota Statutes 177	
Legal basis for exemption:	
<input type="checkbox"/> Employee is non-exempt (entitled to overtime, minimum wage, other protections under Minn. Stat. 177)	
4. Rate or rates of pay	
Paid by: Hour <input type="checkbox"/> Shift <input type="checkbox"/> Day <input type="checkbox"/> Week <input type="checkbox"/> Salary <input type="checkbox"/> Piece <input type="checkbox"/> Commission <input type="checkbox"/> Other method <input type="checkbox"/>	

Wage notice

- The wage notice must provide:
 - 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.
 - For information regarding who can be considered exempt, as well as information regarding other exceptions that may apply to minimum wage and overtime, reference Minnesota Statutes 177.23 and Minnesota Administrative Rules, Chapter 5200.0180 through 5200.0220.
 - Number of days in the employee's pay period and the regularly scheduled payday.
 - Date the employee will receive the first payment of wages earned.

Earnings statements

- Earnings statement requirements:
 - Name of the employee.
 - Total hours worked by the employee in the pay period.
 - 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.

Earnings Information	Current	Year to Date
Normal Gross	4,389.30	
Deductions	0.00	
Adjustments	0.00	
Overtime	0.00	
EARNINGS TOTAL	4,389.30	5,277.30
Non-Taxable Gross	351.14	418.18
Taxable Gross	3,971.12	4,859.12

Statutory & Other Deductions	Current	Year to Date
Federal Withholding	311.17	311.17
Additional Federal Withholding	0.00	*****
State Withholding	135.96	135.96
Additional State Withholding	0.00	*****
SDI	0.00	55.06
Medicare	62.67	75.55
Medicare Buyout	0.00	0.00
State Disability Insurance	0.00	0.00
RS	351.14	351.14
RS	0.00	0.00
Corporate Retirement	0.00	
	67.04	0.00

Labor Standards services and process

- Investigations
 - Wage claim
 - Inform and educate
 - Investigation
- Education and outreach
 - Technical assistance
 - Training
 - Videos
 - Website and materials



For more information

- Visit our web site at www.dli.mn.gov/laborlaw.
- Sign up for the *Wage and Hour Bulletin* on our website.
- Contact DLI's Labor Standards at 651-284-5075 or dli.laborstandards@state.mn.us.

Fair Labor Standards Act

Presented by the
U.S. Department of Labor
Wage and Hour Division

Corey Walton
(Community Outreach and Resource Planning)



U.S. Department of Labor
Wage and Hour Division



LAWS ENFORCED BY WHD

- **Fair Labor Standards Act**
 - Nursing Mothers Provisions
- **Family and Medical Leave Act**
- **Davis Bacon and Related Acts**
- **Service Contract Act**
- **Polygraph Protection Act**
- **Wage Garnishment**
- **Temporary Worker Programs**



FLSA

Topics of Discussion

- **FLSA Coverage**
- **Hours Worked Issues**
- **Exemptions***



Major Provisions of FLSA

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Recordkeeping



Coverage

Two types of coverage

- Enterprise coverage: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections
- Individual coverage: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections



Enterprise Coverage

- Enterprises with
 - At least two (2) employees
 - At least \$500,000 a year in business
- Hospitals, businesses providing medical or nursing care for residents, schools, preschools and government agencies (federal, state, and local)



Individual Coverage

- Workers who are engaged in:
 - Interstate commerce;
 - Production of goods for commerce;
 - Closely-related process or occupation directly essential (CRADE) to such production; or
 - Domestic service
- Engaging in “interstate commerce” which may include:
 - Making telephone calls to other states
 - Typing letters to send to other states
 - Processing credit card transactions
 - Traveling to other states



Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time (*See USDOL-WHD Fact Sheet #79D*)

****See USDOL-WHD Fact Sheet #22***



Suffered or Permitted

Work not requested but suffered or permitted is work time



Meal and Rest Periods

Meal periods are not hours worked when the employee is relieved of *duties for the purpose of eating a meal

Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid

**Whether active or inactive.*



Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance



Travel Time

- Ordinary home to work travel is not work time
- Travel between job sites during the normal work day is work time
- Special rules apply to travel away from the employee's home community



Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA



“White Collar” Exemptions



U.S. Department of Labor
Wage and Hour Division



“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees



Three Tests for Exemption

Salary Level (\$684 wk)

Salary Basis (Guaranteed)

Job Duties (Primary Duty)



U.S. Department of Labor
Wage and Hour Division



Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight



Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance



FLSA COMMON VIOLATIONS

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law



Limits of the FLSA

FLSA does NOT require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees
16 years or older may work
- Pay raises, fringe benefits



Additional Information

- Visit the WHD homepage at: www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)
- USDOL Basic Information Fact Sheet
 - https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whd_fs.pdf
- USDOL Fact Sheet #17A (Exemptions)
 - <https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime>
- USDOL Fact Sheet #22 (Hours Worked):
 - <https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked>



Disclaimer

This presentation is intended as general information only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.

