

## Summary of Minnesota's new Wage Theft Law

The Minnesota Legislature passed and the governor 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. All provisions summarized below, except for those amending Minnesota Statutes § 609.52 (criminal wage theft and sanctions), go into effect July 1, 2019. The provisions providing for criminal wage theft and sanctions go into effect Aug. 1, 2019.

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

The following is a summary of the new Wage Theft Law that amends provisions of Minnesota Statutes, Chapters 175, 177, 181, 16C and 609.

### Payment of wages (amendments to Minn. Stat. § 181.101)

The new law clarifies the law 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, in addition to the right to be paid wages or commissions earned at specific intervals on a regular payday.

- Makes clear the term "wages" includes "salary, earnings and gratuities."
- Provides that all commissions earned must be paid at least once every three months on a regular payday.

### Notice to workers at the start of employment (amendments to Minn. Stat. § 181.032)

The new 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, which is in addition to the information required to be provided to workers under existing law: <sup>1, 2, 3</sup>

- The 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, and the specific application of any additional rates.
- Allowances, if any, that may be claimed for permitted meals and lodging.

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<sup>1</sup> When recruiting migrant workers, employers must also comply with the notice, recordkeeping, and wage and hour requirements of Minn. Stat. §§ 181.85-181.91.

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

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

- Provision of paid vacation, sick time or other paid time-off, how the paid time-off will accrue and terms for its use.
- The employee's employment status and whether the employee is exempt from the minimum wage, overtime and other provisions of Minn. Stat., Chapter 177, and on what basis.
- A list of deductions that may be made from the employee's pay.
- The number of days in the pay period, the regularly scheduled payday and the payday on which the employee will receive the first payment of wages earned.
- The legal name of the employer and the operating name, if different.
- The physical address of the employer's main office or principal place of business and a mailing address, if different.
- The telephone number of the employer.

Employers are required to keep a copy of the signed notice for each employee. All employers must provide the notice in English, with text that informs employees they may request the notice be provided to them in another language. The Department of Labor and Industry (DLI) will provide, in multiple languages, the text that must be included with the notice. If an employee requests the notice in another language, the employer must provide it. Employers are also required to provide employees in writing any changes to the information in the notice before the date the changes take effect.

## **Earnings statement requirements (amendments to Minn. Stat. § 181.032)**

In addition to the notice an employee must receive and sign at the start of employment, the new law adds the following requirements to the specific information that must be included on the earnings statements provided to employees each pay period:

- The employee's rate or rates of pay and basis thereof, including whether the employee is paid by hour, shift, day, week, salary, piece, commission or other method.
- Allowances, if any, claimed pursuant to permitted meals and lodging.
- The physical address of the employer's main office or principal place of business, and a mailing address, if different.
- The telephone number of the employer.

## **Employer recordkeeping requirements (amendments to Minn. Stat. § 177.30)**

Under existing law, employers are required to keep various records for three years. The new law requires the following additional records be kept:

- Hours worked for employees paid at piece rate and the number of pieces completed at each piece rate.
- A list of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies.

- A copy of the 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 subsequently provided to employees.

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.

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.

## **Retaliation is prohibited and carries a civil penalty in addition to other remedies (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 that violates this subdivision is liable for a civil penalty of \$700 to \$3,000 for each violation.

## **Responsible contractor minimum criteria (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), in the list of laws 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.

## **DLI enforcement authority and penalties for violations (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. 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 remedies application, 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.

## **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.

## **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 Act) under Minn. Stat. § 8.31.

## **Misdemeanor violations (amendment 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.

## **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 that 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:

- 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.