

Guidance for employees 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 provide additional information and protections to employees.

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 provided 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.

Questions and answers about the new Wage Theft Law are online at www.dli.mn.gov/business/employment-practices/wage-theft-qa.

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

New protections for employees

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

Employers are now required by Minnesota law to provide written notice to employees about their employment status and terms of employment, including wages, hours and benefits.

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}

¹Migrant workers are entitled to additional protections under Minn. Stat. §§ 181.85-181.91.

²Employees in the meatpacking industry are also entitled to additional notice under Minn. Stat. § 179.86.

³Employees working for employers employing 10 or more employees, who are not farm laborers or casual employees employed temporarily, should also receive written agreement requirements as listed under Minn. Stat. § 181.55-181.57,

- 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)**.
- 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)**. 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)**.

The Department of Labor and Industry (DLI) has created an employee notice example that is online at www.dli.mn.gov/sites/default/files/doc/employee_notice_form.docx. Employers may use the example notice or create their own.

Additional information employers are required to provide to 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. (Employees may request the earning statement be provided in writing instead of by electronic means. If the earnings statement is provided by electronic means, the employer must provide the employee access to an employer-owned computer during an employee's regular working hours to review and print earnings statements.) 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).**

Employees should keep copies of their earnings statements and review them each payday to ensure they accurately reflect the hours worked and pay received. It is also recommended that employees record the hours they work each day, the rate or rates of pay for the hours they worked and any deductions that would be made from their wages.

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 payday (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 that violates this subdivision is liable for a civil penalty of \$700 to \$3,000 for each violation.

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.

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.

What employees can do if they are not paid all the wages due to them within the time required by the law

Contact DLI

If you have questions about the new Wage Theft Law or believe your employer has violated any provision of the Minnesota Fair Labor Standards Act, the Minnesota Prevailing Wage Act or provisions of the Minnesota Payment of Wages Act, or retaliated against you for asserting your rights under these laws, call the Minnesota Department of Labor and Industry's Labor Standards at 651-284-5075. The identity of persons who contact the department for information or to make a complaint are kept confidential by the department.

- If your employer fails to pay you all your wages and/or fails to pay them timely, the commissioner may order the employer to pay the wages you have earned at the rate or rates of pay you and your employer agreed to or the rate or rates required by law or contract, whichever is greater.
- In addition, the commissioner may also order the employer to pay an amount equal to the wages you have earned as liquidated damages and/or pay a penalty equal to either your average daily earnings at the same rate or rates or pay a penalty equal to 1/15th of the commissions earned but unpaid for each day payment is not made in response to the commissioner's order.

File a lawsuit in court

- Small claims court is for amounts in dispute of \$15,000 or less (no attorney required).
- District court is for amounts in dispute greater than \$15,000.