

Minnesota Adds New Wage Payment and Recordkeeping Requirements; Criminalizes ‘Wage Theft’

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Related Services

Wage and Hour

Minnesota has enacted detailed new recordkeeping requirements for employers, effective July 1, 2019, and wage theft protections for employees, effective August 1, 2019.

Recordkeeping

As of *July 1, 2019*, Minnesota employers must comply with new notice and recordkeeping requirements.

First, employers must provide more detailed information to employees under new Minn. Stat. § 181.032 (d)–(f). *At the start of employment*, Minnesota employers must now provide employees a *written notice* that includes the following:

1. The 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;
2. Allowances, if any, claimed pursuant to permitted meals and lodging;
3. Paid vacation, sick time, or other paid time-off accruals and terms of use;
4. The employee's employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of chapter 177, and on what basis;
5. A list of deductions that may be made from the employee's pay;
6. The number of days in the pay period, the regularly scheduled pay day, and the pay day on which the employee will receive the first payment of wages earned;
7. The legal name of the employer and the operating name of the employer if different from the legal name;
8. The physical address of the employer's main office or principal place of business, and a mailing address if different; and
9. The telephone number of the employer.

With respect to recordkeeping, the law further states, "The employer must keep a copy of the notice ... signed by each employee acknowledging receipt of the notice." Employers also must provide employees written notice of any changes *before* the changes are effective. Although not required by the statute, employers should consider including an acknowledgment of receipt by the employee with any changes communicated to employees pursuant to this provision.

Second, Minn. Stat. § 181.032(b), regarding employee earnings statements, was amended to require that employers include the following *new information* with the earnings statement provided to employees each pay period:

1. The hourly rate or rates of pay (if applicable) and basis thereof, including whether the employee is paid by hour, shift, day, week, salary, piece, commission, or other method;
2. Allowances, if any, claimed pursuant to permitted meals and lodging;

3. The physical address of the employer's main office or principal place of business, and a mailing address if different; and
4. The telephone number of the employer.

Third, Minnesota's general employer recordkeeping statute, Minn. Stat. § 177.30(a), was amended to require employers to maintain "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."

Additionally, the following new timing provision applies to the new and old recordkeeping requirements:

All records required to be kept under [Section 177.30] paragraph (a) must be readily available for inspection by the commissioner upon demand. The records must either be kept at the place where employees are working or kept in a manner that allows the employer to comply with this paragraph within 72 hours.

While no express private right of action exists under the recordkeeping provisions, the civil penalties and fines, currently under Minn. Stat. §§ 177 *et seq.*, still apply, in addition to possible criminal penalties. Specifically, "[t]he commissioner may fine an employer up to \$1,000 for each failure to maintain records as required by this section, and up to \$5,000 for each repeated failure." The same penalties (\$1,000/failure, \$5,000/repeated failure) apply "for each failure to submit or deliver records as required" to the commissioner. The amendments provide:

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

It is a misdemeanor under Minn. Stat. § 177.32, subd. 1, if an employer, among other things, "repeatedly fails to make, keep and preserve records as required by section 177.30," "falsifies any record," and/or "refuses to make any record available" as required by law. Further, the new legislation authorizes the Minnesota Attorney General to take action to enforce Chapter 177.

Wage Payment

The new laws also changed the wage payment timing provision, including the payment of commissions. Effective *July 1, 2019*, all wages, newly defined in the statute as "including salary, earnings, and gratuities," must be paid at least every 31 days. The law also requires employers to pay "all commissions earned by an employee at least once every three months." Minn. Stat. § 181.101.

Significant to these wage payment changes is that employers may no longer rely upon the longstanding 15-day cap on a damage penalty for failure to pay wages following the employee's demand. Instead, there will be *no limit* to the penalty following a 10-day notice period. The law states: "This section provides a substantive right for employees to the payment of wages, including salary, earnings, and gratuities, as well as commissions, in addition to the right to be paid at certain times."

Wage Theft

Finally, effective *August 1, 2019*, Minnesota employers who commit "wage theft" will be

guilty of a crime.

“Wage theft” is defined broadly. Under the new law, if an employer does any of the following, with “an intent to defraud,” it could be guilty of “wage theft”:

- 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, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay 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; or
- 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.

Minnesota Labor Department

The new law increases the authority of the Minnesota Department of Labor and Industry (MN DOLI) to conduct investigations of potential violations, including giving it the right to “interview in private nonmanagement employees regarding the matter under investigation.”

The legislation includes \$3.1 million in new funding over the next two years for MN DOLI’s enforcement of the state’s wage and hour laws. [MN DOLI has announced](#), “This additional funding will allow our agency to add critical staff needed to perform more strategic and targeted workplace enforcement and conduct greater outreach and education for employers, workers and their communities.”

Retaliation

The state enacted a new law protecting employees from retaliation if they assert rights under the Minnesota Fair Labor Standards Act (Ch. 177) and the Minnesota Employment Code (Ch. 181). Further, “[i]n addition to any other remedies provided by law, an employer who violates this subdivision is liable for a civil penalty of not less than \$700 nor more than \$3,000 per violation.”

Compliance

Minnesota employers need to be ready to comply with the [many changes](#) taking effect on July 1 and August 1. Jackson Lewis attorneys are ready to assist with any compliance questions.

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