

## **ENHANCED DISCLOSURES, RECORDKEEPING, AND POSSIBLE CRIMINAL SANCTIONS: WHAT EMPLOYERS AND EMPLOYEES SHOULD KNOW ABOUT MINNESOTA'S NEW WAGE THEFT LAW NOW IN EFFECT**

A series of legislative amendments was passed in May 2019 creating Minnesota's new Wage Theft Law. The civil component of the Wage Theft Law — requiring greater employer disclosures for new workers and on earnings statements — went into effect July 1, 2019. The criminal penalties for employer violations under Minn. Stat. § 609.52 became effective August 1, 2019.

The new law is designed to protect Minnesota workers from illegal deductions to, or withholding of, monies rightfully earned through the course of employment. Under a policy of greater transparency, new workers must now be given written notice at the start of their employment informing them on certain employment terms such as: status, whether a worker is exempt for minimum wage or overtime, provisions of paid vacation, sick time, or other paid time off (PTO), how the paid time off will accrue, and the employee's rate or rates of pay and the basis thereof. The complete list of required disclosures is included further in this article.

The law also requires enhanced disclosure of information on all employee earnings statements, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission (or other method) and whether there are allowances claimed for permitted meals and lodging. By requiring enhanced disclosures employees can more easily assess how employers are calculating earnings to ensure the pay received accurately reflects the hours worked.

### **WHAT IS WAGE THEFT?**

Wage theft is statutorily defined as occurring when an employer with intent to defraud:

1. 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 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;
2. 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;
3. 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
4. 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.

Minn. Stat. § 609.52, subd.1(13) (i)-(iv). Simply put, wage theft occurs when employer fails to pay their employees what is owed to them — legally or contractually — for the work they have performed. According to the Minnesota Department of Labor and Industry, this practice affects roughly 40,000 Minnesota workers each year. Common examples of wage theft include forced tip sharing or pooling, unpaid overtime, intentionally classifying workers as independent contractors, and withholding paychecks.

Under Minn. Stat. § 181.101(a) every employer must pay all wages, including salary, earnings, and gratuities earned by an employee at least once every 31 days and all commissions earned by an employee every three months, on a regular payday, designated in advance by the employer regardless of whether the employee requests payment at longer intervals. This excludes an employer of volunteer firefighters, a member of an organized first responder squad formally recognized by a political subdivision of the state, or a volunteer ambulance driver or attendant, all of whom are governed separately. *Id.*

Employees terminated, discharged, or fired are due all wages and commissions within 24 hours of a demand for payment by the former employee. Employees who quit are due all wages and commissions on the next regularly scheduled payday. If the payday is within five calendar days of the last day of work, the employer has up to 20 calendar days to make final payment. Minn. Stat. §§ 181.13-.14

### **CRIMINAL PENALTIES FOR WAGE THEFT**

The law creates serious exposure above and beyond civil damages for employers not in compliance. Effective August 1, 2019 the criminal sanctions for committing wage theft under Minn. Stat. 609.52, subd. (3) include:

1. Imprisonment for not more than 20 years, payment of a fine not more than \$100,00, or both, if the value of the wages stolen is more than \$35,000;
2. imprisonment for not more than 10 years, payment of a fine not more than \$20,000, or both, if the value of the wages stolen exceed \$5000
3. imprisonment for not more than 5 years, payment of a fine of not more than \$10,000, or both, if
  - a. the value of the wages stolen is more than \$1000 but not more than \$5000
  - b. the value of the wages stolen is more than \$500 but less than \$1000 and the person has been convicted within the preceding five years for an offense under this section
4. imprisonment for not more than 1 year, payment of a fine not more than \$3000, or both if the value of the wages stolen is more than \$500 but not more than \$1000; or
5. imprisonment for not more than 90 days, payment of a fine not more than \$1000, or both in all other cases where the value of the wages stolen is \$500 or less.

*Id.* 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.

Furthermore, Minn. Stat. § 177.45, subd. (6) prohibits employers from retaliating against employees for filing, 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 provision is liable for a civil penalty of not less than \$700 nor more than \$3000 per violation. *Id.*

## NEW EMPLOYEE NOTICE

As of July 1, 2019 all employers must provide each employee with a written notice at the start of their employment — which includes seasonal employees hired again at the beginning of the next season — containing the following information:

1. The 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, 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 [meaning the employer must include in the written notice provided to an employee the legal basis for the exemption from minimum wage, overtime, and other provisions of Minn. Stat. Chapter 177];
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.

Minn. Stat. § 181.032, subd. (d). The employer is required to keep a copy of the notice, signed by the employee acknowledging receipt of the notice. The notice must be written in English and include a statement, in multiple languages, that informs employees they may request the notice be provided to them in another language. Employers must also give employees a written copy of any changes made to the above information prior to the changes taking effect.

Electronic versions of the notice are permissible, provided the signatures comply with Minn. Stat. § 325L.02 and provide a means for employees to secure a copy of the notice, such as a printable or downloadable copy. But employers should be wary of using employee handbooks or collective bargaining agreements as notice documents, as they may not meet the requisite specificity threshold. Department of Labor and Industry, *Wage Theft Q&A* (Aug. 7, 2019) <https://www.dli.mn.gov/business/employment-practices/wage-theft-qa>.

Note: while the changes to Minnesota's Wage Theft Law do not explicitly require employers to provide written notices to current employees, it's generally regarded as best practice to do so.

Furthermore, the law has requirements regarding the information earning statements must include for all employees under Minn. Stat. § 181.032, subds. (a)-(c) and records the employer must keep under Minn. Stat. § 177.30.

#### **WHAT BOTH EMPLOYERS AND EMPLOYEES SHOULD KNOW**

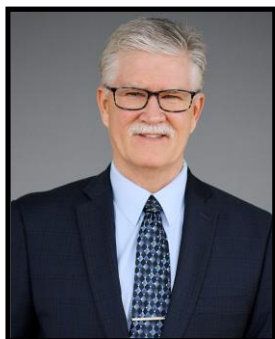
Now is the time for employers to revisit worker classifications, personnel policies, and reviewing timekeeping processes to ensure accuracy. Complete and accurate employment records are often the best evidence used to demonstrate an employer's compliance with stage wage and hour laws. If the records 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 in addition to fining an employer up for \$1000 for each failure to maintain records as required and \$5000 for each repeated failure thereafter. Minn. Stat. § 177.30, subds. 7(c)-(d).

Under existing law, most employers are required to keep various employment records — including each employee's rate of pay and the amount paid each pay period — for three years. The new Wage Theft Law now requires employers to also keep 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, 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 provided to each employee.

These records must be kept either 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. Minn. Stat. § 177.30, subd. 7(b). The commissioner or an authorized representative may also enter and inspect places of employment without reasonable delay during normal working hours to investigate facts, conditions, practices, or matters the commissioner deems appropriate to enforce the laws within their jurisdiction. Minn. Stat. § 175.20.

Workers who believe their employer is violating the Wage Theft Law may file a complaint with the Department of Labor and Industry by calling 651-284-5075. The identity of persons who contact the department either for information or to file a complaint are kept confidential.

A full summary of the legislative amendments in addition to frequently asked questions are available from the Minnesota Department of Labor and Industry [available here](#).



If you have questions about Minnesota's new Wage Theft Law or other employment related questions, please contact [Morgan Godfrey](#) or anyone in the Firm's [Employment Practice Group](#) at 952-831-6544.