



DEPARTMENT OF LABOR AND INDUSTRY

New Wage Theft Law 2019

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Overview

- Effective dates of the new laws
- New responsibilities for employers
- Clarification of wages and commissions – what must be paid and when
- Retaliation prohibited
- Responsible contractor requirements
- DLI and Attorney General enforcement authority
- Crime of wage theft

Effective dates of the new laws

- Criminal provisions go into effect Aug. 1, 2019.
- Everything else went into effect July 1, 2019.

New responsibilities for employers

- Additional information employers are required to provide to employees when they start work (Employee Notice):
 - 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.
 - 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.
 - 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.
 - Allowances, if any, that may be claimed for permitted meals and lodging.

New responsibilities for employers

- Notice requirements (continued):
 - Provision of paid vacation, sick time or other paid time off (PTO), how the paid time off will accrue and terms for its use.
 - A list of deductions that may be made from the employee's pay.
 - Employer's legal name and the operating name, if different.
 - Physical address of employer's main office or principal place of business and a mailing address, if different.
 - Employer's telephone number.

New responsibilities for employers

- Employers are required to keep a copy of the notice signed by each employee.
- 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.
- The employer must provide the notice in another language if requested by the employee.
- Employers are also required to provide employees in writing any changes to the information in the notice before the date the changes take effect.

Current responsibilities for employers

- Information that must be on employee earnings statements:
 - 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.

New responsibilities for employers

- **New** earnings statements requirements:
 - 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.
 - Allowances claimed for permitted meals and lodging.
 - Employer's telephone contact.
 - Physical address of employer's main office or principal place of business and a mailing address, if different.

Current responsibilities of employers

- Recordkeeping requirements:
 - Each employee's name, address and occupation.
 - Each employee's rate of pay and the amount paid each pay period.
 - Each employee's hours worked each day and each workweek.
 - Certified payroll (for prevailing-wage projects only).
 - Other information the commissioner finds necessary and appropriate to enforce Minnesota Statutes §§ 177.21 to 177.435.

New responsibilities for employers

- **New** records employers are required to maintain:
 - Each employee's hours worked each day and each workweek, **including, for all employees paid at piece rate, the number of pieces completed at each piece rate.**
 - 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 new 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.

New responsibilities for employers

- These records 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.

Clarification of "wages" and "commissions"

Clarifications and requirements for what wages and commissions an employer must pay and when employers must pay wages and commissions to employees:

- Employers 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 at least once every three months 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 pay day.

Retaliation prohibited

- 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 requirements

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 that 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

The application of remedies under existing law was clarified and penalty amounts were increased for repeated violations of the recordkeeping laws. The commissioner's enforcement authority was also clarified and expanded:

- 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 nonmanagement employees in private regarding an investigation.

DLI enforcement authority

Clarification of application of remedies and 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.

DLI enforcement authority

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.

DLI enforcement authority

- 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

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) under Minn. Stat. § 8.31.

Criminal wage theft – misdemeanor

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.

Criminal wage theft

- 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.

Criminal wage theft

"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."

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.

Criminal wage theft

- 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.

Questions?

- Check out our webpage about the new law:
www.dli.mn.gov/business/employment-practices/wage-theft-legislation-2019-and-summaries.
- Sign up for our *Wage and Hour Bulletin*:
https://public.govdelivery.com/accounts/MNDLI/subscriber/new?topic_id=MNDLI_26.
- Contact us at 651-284-5075 or dli.laborstandards@state.mn.us.

Thank you!

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