New Minnesota Wage Theft Law Imposes New Obligations On Employers

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The Minnesota legislature passed a new wage theft bill, which has been signed into law by Gov. Tim Walz, that expands the required information that employers must disclose to employees upon hiring and throughout their employment. The law also requires employers to maintain additional records, clarifies time limits for when employees must be paid, provides the Attorney General with investigation and enforcement authority, protects employees against retaliation, and allows both civil and criminal penalties for violations.

The bill goes into effect on July 1, 2019, although the criminal enforcement sanctions do not take effect until Aug. 1, 2019.

What Does This New Law Mean for Employers?

The purpose of this bill is to create greater transparency and clarity of payment calculations for employees, especially those who are overtime-eligible. With this new law, employers must provide employees with information regarding the components of their compensation, overtime eligibility status, timing for wage payments, potential for deductions from pay, and company contact information (presumably in the event an employee has questions about their pay).

With the enactment of this bill, employers will want to: 1.) review the wage documentation given to new employees upon hire, as well as wage statements given to employees, 2.) review their record retention policies and practices, as they pertain to employee wage information, and 3.) have a process to ensure that employees who were given the initial written wage notices receive written notice of any changes to the policies and processes described in the original wage notice, before those changes take place.

Notice and Recordkeeping Requirements

The following summary outlines requirements for employers to maintain compliance with the new law.

New Information to Be Disclosed to New Employees by Employers (Minn. Stat. § 181.032)

When a new employee begins employment, employers must provide a written notice of the following information to the employee:

- employee’s employment status and whether an employee is exempt from minimum wage, overtime and other state wage and hour laws, and if so, 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
- 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

Once the notice has been provided, employees must sign the notice acknowledging that they have seen the information and the employer must retain a copy of the signed notice, according to the new law. The document must also inform the employee that a version of the notice is available in other languages, and if requested, the employer must provide the translated version of the notice in the requested language, at its own cost. The Department of Labor and Industry will have statements available in multiple languages that must be added to the notice.

If any of the information changes during the course of employment, the employee must be given notice of the change prior to implementation.

Earnings Statement Disclosures (Minn. Stat § 181.032)

The new law adds additional earnings statement disclosure requirements. Earnings statements must include the following:

- employee name
- total hours worked in the pay period
- employee’s rate or rates (if more than one method of calculation) of pay and basis thereof, including whether the employee is being paid by the hour, shift, day, week, salary, piece, commission or other method
- allowances claimed for permitted meals and lodging
- total amount of gross pay earned in the pay period
- list of deductions made from the employee’s pay
- net amount of pay after all deductions are made
- date pay period ended
- employer’s legal and operating name
- employer’s telephone contact
- physical address of employer’s main office or principal place of business and a mailing address, if different from the main office or principal place of business

If an employer normally provides electronic statements but receives at least 24 hours’ notice that an employee prefers to receive a hard copy of the earnings statement, the employer must provide the employee with a paper copy of the statement, and continue providing paper copies of the statements for that employee, until requested otherwise.

Maintaining Records (Minn. Stat. § 177.30)

Employers must maintain records for three years, and the new law requires that the records be kept where the employees are working or in a place where records may be accessible and deliverable to the Department of Labor and Industry within 72 hours of request.

The following records must be kept by an employer for the three-year period:

- each employee's name, address and occupation
- each employee's rate of pay and the gross and net amount paid each pay period
- 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 provided to and signed by each new employee and a copy of any written changes to the notice that were provided to each employee
- for each employer subject to the Minnesota Prevailing Wage Act, for public works projects funded in whole or in part with state funds, employers must furnish a certified payroll report every two weeks signed under oath by an owner or officer of the employer stating the wages and benefits paid each employee during the preceding weeks, and specifying for each employee:
    - name
    - identifying number
    - prevailing wage master job classification
    - hours worked each day
    - total hours
    - rate of pay
    - gross amount earned
    - each deduction for taxes
    - total deductions
    - net pay for the week
    - dollars contributed per hour for each benefit, including name and address of administrator
    - benefit account number
    - telephone number for health and welfare, vacation or holiday, apprenticeship training, pension and other benefit programs

- any other information the commissioner finds necessary and appropriate to enforce the prevailing wage law

Timing for Making Wage Payments (Minn. Stat. § 181.101)

The law specifies that employers must pay all wages (salary, earnings and gratuities) to employees at least once every 31 days. All commissions earned by the employee must be paid at least once every three months on a regular payday.

Enforcement Provisions

Attorney General Enforcement Authority (Minn. Stat. § 177.45)

The new law gives the attorney general the power to enforce the Minnesota Fair Labor Standards Act, Prevailing Wage Act, and the proper payment of wages included in the new law.

Penalties for Violations

Civil Penalties (Minn. Stat 177.27 subd. 2)

The new law allows the commissioner to require an employer to pay wages or commissions owed to an employee, pay owed wages or commissions as liquidated damages, pay compensatory damages incurred by the employee, and pay civil penalties for repeated or willful violations.

The commissioner may impose penalties of up to $5,000 for each repeated failure to submit or deliver records required by law and for each repeated failure to keep and maintain the required records. For each day that wages are not paid to an employee in accordance with the commissioner's order, the commissioner may penalize the employer with the average amount of daily wages for that employee or an amount equal to 1/15th of the commissions earned by the employee.

Criminal Wage Theft (Minn. Stat. § 609.52)

The new law defines "wage theft" as not paying an employee the agreed upon wage, earnings, or commissions, directly or indirectly causing an employee to give a receipt for an amount more than was paid, directly or indirectly demanding or receiving a rebate or refund for money that was not due, or where the employer attempts to show greater payment to an employee than was actually paid.

The punishment for criminal wage theft varies greatly. Penalties range from up to $100,000 in fines and no more than 20 years in prison, to no more than one year in prison and a $3,000 fine, depending on the amount at issue. When determining damages, the law allows the wages to be aggregated for up to a six-month period.

Retaliation (Minn. Stat. § 181.03)

The new bill has non-retaliation protections. An employer who retaliates against employees for asserting rights or remedies under Minnesota's wage and hour laws may be fined $700-$3,000 for each violation.

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