Minneapolis
City of Lakes

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MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS
MUNICIPAL MINIMUM WAGE
FREQUENTLY ASKED QUESTIONS

This document constitutes guidance on general rights and responsibilities of employers and employees and related issues pursuant to Minneapolis Code of Ordinances Title 2, Chapter 40, Article IV (Municipal Minimum Wage Ordinance).

This document is intended to provide the public with information about how The Minneapolis Department of Civil Rights ("the Department") may guide its personnel in processing and investigating charges and interpreting the Municipal Minimum Wage Ordinance.

Effective Date: The Municipal Minimum Wage Ordinance takes effect Jan. 1, 2018. Frequently Asked Questions were most recently revised December 1, 2017.

Scope: This document provides general information and guidance on the implementation and enforcement of the City's Municipal Minimum Wage Ordinance. Employers and employees may have additional rights under other local, state, or federal laws. This guidance does not address employer or employee rights or obligations with respect to these other laws.

1.) Q: What is the minimum wage ordinance?

A: The minimum wage ordinance sets a new hourly minimum wage standard for work performed in Minneapolis.

Find the City of Minneapolis geographical boundaries here:
http://cityoflakes.maps.arcgis.com/apps/PublicGallery/map.html?appid=4172cd1ed97749a6a4623dd7aa5a246f&webmap=0e9be43abc834e85bc6ad003d9358c76

Find out if an address is inside or outside of Minneapolis here:
https://gis.hennepin.us/Property/Map/Default.aspx

2.) Q: What are wages?

A: Wages include salary, hourly pay, piece rate pay, commissions, and non-discretionary performance bonuses. Tips and employer payments toward medical benefits plans are *not* wages.

The costs of the following items are not considered wages: 1) uniforms or specially designed clothing required by an employer which is not appropriate for use except in that employment; 2) equipment used in the course of employment, except tools of a trade, a motor vehicle, or other equipment which may be used outside the employment; 3) consumable supplies required in the course of the employment; or 4) or travel expenses in the course of employment, except for those incurred in traveling to or from the employee's residence. An employer may not deduct these items from an employee's paycheck if those deductions reduce the employee's wages below minimum wage.

Employers found to have implemented a system of excessive payroll deductions for the purpose of circumventing the minimum wage law may be found to be in violation of the ordinance.

3.) Q: What is an hour for purposes of the minimum wage law?

A: Employees must be paid for all time for which the employee performed work for the employer's benefit.

4.) Q: Do tips count toward the minimum wage?

A: Tips and gratuities do not affect the new minimum wage owed to employees. No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage.

> Scenario:
>
> Tina is a server at a restaurant in Minneapolis. On average, she receives about $8 an hour in tips. Does that count towards the minimum wage her employer must pay her? No, it does not. The employer must pay her at least the minimum wage--not counting tips or gratuities.

Note: State law regulates "tip pooling." Please see http://www.dli.mn.gov/ls/TipsCredit.asp or contact the Minnesota Department of Labor and Industry for information on compliance with State law.

5.) Q: Who is considered an employee subject to the minimum wage ordinance?

A: An employee is any person who performs work for an employer for compensation, unless otherwise excluded by the ordinance. Persons who are exempt from the state minimum wage under Minnesota Statute Section 177.23 (the state minimum wage law) are also exempt from the Minneapolis minimum wage. Additionally, a) independent contractors and b) certain workers participating in a Minnesota Department of Employment and Economic Development program for persons with disabilities are also exempt from the minimum wage ordinance. *Note: The definition of employee in the Minneapolis Minimum Wage Ordinance is not the same as the definition of employee in the Minneapolis Sick and Safe Time Ordinance*.

6.) Q: Do part-time, seasonal, or temporary personnel count as employees?

A: Yes. Full-time, part-time, seasonal, and temporary staff, and persons who are jointly employed by one or more employers (e.g. employees hired through the services of a staffing agency or similar entity) can all be employees, if they fall into the definition above.

7.) Q: What is an independent contractor?

A: Simply labeling someone an independent contractor does not make it so. Whether a person is an 'independent contractor' is determined on a case-by-case basis based upon a variety of facts, including but not limited to, the extent to which the independent contractor retains supervision, direction, and control over the work and the means to complete it. For more information about what makes an employee an 'independent contractor', please see the State of Minnesota Administrative Rules part 5200.0221, available here: https://www.revisor.mn.gov/rules/?id=5200.0221.

8.) Q: What if employees based outside of Minneapolis pass through Minneapolis as part of their job?

A: The minimum wage does not apply to workers who pass through Minneapolis without making any work-related stops.

9.) Q: What if an employee based outside of Minneapolis works within Minneapolis on an occasional basis?

A: If an employee works two or more hours within the City in a particular week, the employee must be paid at least the minimum wage for the time worked within the City. Employees who work less than two hours in a particular week within the City are not covered by the ordinance.

10.) Q: Does the ordinance apply to an employer who isn't located in Minneapolis but has an employee performing work in Minneapolis?

A: Regardless of where an employer is located, it must pay at least the Minneapolis minimum wage rate, for time worked in the City of Minneapolis, to any employee who performs at least two hours of work in a calendar week within the City of Minneapolis. For purposes of this rule, a calendar week runs from Monday to Sunday.

11.) Q: How does an employer know how much time an employee spends working within the City limits?

A: An employer may make a reasonable estimate of an employee's time spent working in the City for purposes of determining if any employee has performed at least two hours of work in a calendar week within the City. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, delivery addresses and standard estimated travel times, or historical averages. Smart phone apps also exist for the purpose of GPS location and payroll time tracking.

12.) Q: How much is the Minneapolis minimum wage?

A: Until July 1, 2024, the minimum wage rate depends upon an employer's size, as defined by total number of workers. See questions 13, 14, and 15 below. The required minimum wage rate will increase until reaching $15 and then continue increasing yearly to account for inflation. Here is a schedule of the initial increases:

	Large business	**Small business**
Jan. 1, 2018	$10	–
July 1, 2018	$11.25	$10.25
July 1, 2019	$12.25	$11
July 1, 2020	$13.25	$11.75
July 1, 2021	$14.25	$12.50
July 1, 2022	$15	$13.50
Jan. 1, 2023	Increase indexed to inflation	–
July 1, 2023	–	$14.50
Jan. 1, 2024	Increase indexed to inflation	–
July 1, 2024	–	Equal to large business

13.) Q: What is a "large business" under the minimum wage ordinance?

A: "Large business" means all employers that had **more than one hundred (100**) persons performing work for compensation in the previous calendar year. To calculate the size of a business, please see question 15.

14.) Q: What is a "small business" under the minimum wage ordinance?

A: "Small business" means all employers that had **one hundred (100) or fewer** persons performing work for compensation in the previous calendar year. To calculate the size of a business, please see question 15.

15.) Q: How do I determine my business size under the minimum wage ordinance?

A: To determine an employer's size, count the total number of persons performing work for compensation. Add each person per week for each week of the previous calendar year and divide by 52. Include full-time, part-time, jointly-employed, paid interns, seasonal, and temporary workers, no matter where they are located. This calculation determines whether an employer is considered "large" or "small" for purposes of the ordinance (see questions 13 and 14). If an employer is a franchise or a full-service restaurant, see questions 18 and 19 below.

Scenario (a):

Robot World, a business in Minneapolis, employed 30 full-time workers, 22 part-time workers, and two temp workers each week last year. Robot World averaged a total of 54 (30 + 22 + 2) workers per week. It is a "small business" for purposes of the minimum wage ordinance because 54 is less than 100. (See also, question 14.)

Scenario (b):

Tree World is a business in Minneapolis. It is open all year round, but there is a lot of variation in the number of persons working during the year. For 12 weeks of the year, it employs 150 full-time workers. During the slowest 10 weeks, it only employs 25. For the remaining 30 weeks, it employs 50 workers.

Tree World has to do some math. It looks like this:

12 weeks x 150 workers = **1,800**
10 weeks x 25 workers = **250**
30 weeks x 50 workers = **1,500**

1,800 + 250 + 1,500 = 3,550

Divide 3,550 by 52 (weeks in a year) to get the average number of employees, like this:

3,550 / 52 = 68.27 employees (weekly average for one year)

Because 68.27 is less than 100, Tree World is a "small business" under the minimum wage ordinance. (See also, question 14.)

16.) Q: For purposes of determining business size, do owners or members of boards count?

A: In most circumstances, individuals who are proprietors, partners, officers, members of boards of directors, or major shareholders are not counted. However masking a worker with one of these titles does not prevent them from qualifying as workers, and the following factors can be considered:

- Whether and, if so, to what extent the organization supervises the individual's work
- Whether the individual reports to someone higher in the organization
- To what extent the individual is able to influence the organization
- Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts
- Whether the individual shares in the profits, losses, and liabilities of the organization

17.) Q: What if I have a new business that has been open less than a year?

A: To determine the size of a new business, count the average number of workers per week during the first 90 days after the new business began operation. Then determine if it is considered a "large" or "small" business under the ordinance. (See questions 13 and 14.)

18.) Q: How do I calculate business size if it is a franchise?

A: If you operate your business pursuant to Minnesota's franchise law, Minn. Stat. 80C.01, and the franchisor and all franchisees own or operate an aggregate of **more than ten (10) locations nationally**, then you are a **large business** under the new Minimum Wage ordinance. You do not need to count the total number of employees.

19.) Q: Are there any special rules for restaurants?

A: If your business is a full service restaurant in Minneapolis which is *not* operated pursuant to Minnesota's franchise law and has **fewer than ten (10) locations nationally,** each restaurant location is treated as a **single, unique employer** solely for the purposes of determining business size. So, you will need to count the number of employees in each restaurant location to determine whether it is a "large" or a "small" business under the new ordinance. See questions 13, 14 and 15.

For purposes of this rule, a full-service restaurant is an establishment in which food and beverage are served and which provides table service to customers to facilitate the ordering and delivery of food and beverage.

Scenario:

Barb's Burgers is a full-service restaurant which is not franchised. There are three Barb's Burgers restaurants in Minneapolis, two in Fargo, and two in Omaha. Since there fewer than 10 Barb's Burgers in the U.S., each of the three Barb's Burgers located in Minneapolis counts as its own unique business for the purpose of determining the business size under the new ordinance. Each Minneapolis Barb's Burgers restaurant will need to count the number of employees working there per week during the previous calendar year. *Note: it is possible that one Minneapolis Barb's Burgers is a "large business" while another is a "small business" under the ordinance*.

20.) Q: I am part of a city-approved training/apprenticeship program. Does the minimum wage apply to me, too?

A: Yes it does apply, but there are some special considerations. For city-approved training and apprenticeship programs, employers must pay employees under the age of twenty (20) not less than eighty-five (85) percent of the minimum wage rate, rounded up to the nearest nickel, for the first 90 days of employment. After the first 90 days, the employer must pay no less than the applicable minimum wage rate.

Note: criteria for approved youth training programs shall be developed by the department of Community Planning and Economic Development and approved by the city's Workforce Investment Board with input from current service providers.

Scenario:

Jade, age 18, just started work at a city-approved training program at a large business in Minneapolis. What is the minimum wage the employer must pay Jade?

On Jan.1, 2018, the minimum wage for large businesses will be $10 an hour. For Jade's first 90 days at the training program, the employer must pay her at least $8.50 an hour (or 85 percent of the applicable minimum wage). After 90 days, the employer must pay her at least $10 an hour (the applicable minimum wage rate for large employers in 2018).

21.) Q: Does the minimum wage law apply regardless of an employee's Immigration status?

A: Employees are covered under the minimum wage ordinance regardless of their immigration status. The Minneapolis Department of Civil Rights will process an employee's report of suspected violation without regard to his or her immigration status. An employee filing a report will not be questioned about his or her immigration status. Additionally, if an employer were to suggest to a person that, if they file a wage claim or complaint, the employer will report

suspected citizenship or immigration status of an employee or a family member to a government agency, this would be considered retaliation, which is also a violation of the ordinance.

22.) Q: Can minimum wage requirements be waived by an employee or her representative?

A: No.

23.) Q: Are collective bargaining agreements exempt?

A: No. Employers operating under a collective bargaining agreement (CBA) must pay all employees at least the minimum hourly wage.

24.) Q: Are employers required to post notices for employees?

A: Yes. Employers must display a workplace notice poster within each of their facilities in Minneapolis in a visible and accessible location. The poster should be displayed where employees can easily read it. Employers must display the poster in English and in each of the primary language(s) spoken by employees at the particular workplace, if published by the Department. Please find notice posters in a variety of languages here: http://minimumwage.minneapolismn.gov/employer-resources.html.

25.) Q: **What documents are employers required to keep?**

A: Employers are required to keep records showing the wages paid to each employee and the number of hours worked by each employee for at least three years. Employers must allow employees to see these records on request. Employers must also allow the Civil Rights Department ("Department") to inspect these records on request to monitor compliance with the law.

26.) Q: If an employee believes an employer failed to pay at least the minimum wage rate, may the employee file a report?

A: Any employee or person may report an alleged violation of the Ordinance, using the Department's "Report of Violation" form, to the Minneapolis Department of Civil Rights Labor Standards Enforcement Division online at minimumwage.minneapolismn.gov or in person at Minneapolis City Hall room 239.

"Report of Violation" forms may also be requested and returned by U.S. mail or email. For more information (or to report anonymously), call 311 or email minwage@minneapolismn.gov.

27.) Q: How will the minimum wage ordinance be enforced by the City?

A: Enforcement of the ordinance is the responsibility of the Director of the Minneapolis Department of Civil Rights. Enforcement is complaint based; however the Department also has broad authority to proactively investigate possible violations and issue fines as necessary to gain compliance.

As in other types of labor law enforcement, compliance reviews and investigations may be utilized to identify all affected employees and protect the anonymity of complainants. Damages and civil penalties will be imposed to make employees whole. Administrative fines may also be imposed. Repeat or intentional violators will receive harsher penalties.

Violations of the ordinance may also result in license sanctions, up to and including revocation of a business license by the City of Minneapolis. All legal options and penalties to gain compliance, including enforcement in a court of law, will be considered.

28.) Q: I want to report a violation, but I'm afraid of retaliation. What should I do?

A: Retaliation against an employee for exercising or attempting to exercise any rights available under the Municipal Minimum Wage Ordinance is strictly prohibited. Material changes in job duties or hours, formal disciplinary action such as documented warnings, or employment termination may be considered retaliatory. Aggressive enforcement to protect employees' rights will be pursued by the Department in these types of cases.

29.) Q: Where can I get more information?

A: Online: minimumwage.minneapolismn.gov

Phone: (612) 673-3000 (**311**) or (612) 673-2157 (TTY)

Email: minwage@minneapolismn.gov

Labor Standards Enforcement Division staff in the Minneapolis Department of Civil Rights will promptly respond to concerns, provide technical assistance, or answer questions from anyone.

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This document is intended as general information only and does not carry the force and effect of law. The Department provides this information as a courtesy to the public. This information and related materials are intended to increase transparency related to the Minneapolis minimum wage ordinance and its enforcement. Please be aware that while the Department tries to keep the information timely and accurately, there may be a delay between official publications of the materials and the modification of these pages. Therefore, the Department

does not make, express, or imply guarantees. The Department will make every effort to correct errors brought to our attention.

The City of Minneapolis can only advise Employers how to comply with the Minneapolis Minimum Wage Ordinance. It cannot advise an Employer how to comply with State law. Please contact the Minnesota Department of Labor and Industry for information on compliance with State law.