

## MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS WAGE THEFT PREVENTION ORDINANCE FREQUENTLY ASKED QUESTIONS

This document is intended to provide the public with information about how the City of Minneapolis Department of Civil Rights may guide its personnel in processing and investigating reported violations and interpreting the Minneapolis Wage Theft Prevention Ordinance.

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**Scope:** This document provides general information and guidance on implementation and enforcement of the City's Wage Theft Prevention Ordinance, Minneapolis Code of Ordinances, [Title 2, Chapter 40, Article V](#). Employees may have additional rights under other local, state or federal laws. This guidance does not address any employer obligations with respect to these other laws. Terminology used in this guidance is defined in Minneapolis Code of Ordinances [Title 2, Chapter 40, Article V](#).

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### General information:

#### 1.) Q: What is wage theft?

A: Wage Theft is a failure to fully and timely pay an employee all wages earned.

Examples may include:

- Working off-the-clock
- Not receiving required overtime pay

- Working more hours than promised for a flat rate
- Unlawful deductions from paychecks
- No payment at all
- Not receiving required paid breaks
- Not being paid sick & safe time
- Work hours undercounted or miscalculated

**2.) Q: Why did the City and State each pass wage theft laws?**

**A:** To help prevent wage theft, the City has adopted part of the [State of Minnesota Wage Theft Law](#) into local ordinance. The City’s ordinance also includes City-specific requirements and allows the Minneapolis Department of Civil Rights to investigate potential wage theft for work performed within the City.

**3.) Q: How is wage theft prevented?**

**A:** Under existing state law and City ordinance, employers must provide employees with written pre-hire notices (sometimes called a “written notice,” “wage notice,” or “offer letter”) that establish the employee’s rate of pay and regularly scheduled payday. Employers must also provide earnings statements (e.g., pay stubs) at the end of each pay period.

Information required by the City on prehire notices and earnings statements includes state requirements plus a few more, as summarized below in question [#4](#) and clarified in questions [#13](#), [#26](#), [#27](#) and [#33](#).

**4.) Q: How do the City requirements differ from the State requirements?**

**A:** The City ordinance adds the following requirements (in addition to those already required under the [state wage theft law](#)) for employees working within the City’s geographic boundaries for at least 80 hours in a year for the same employer:<sup>1</sup>

- The prehire notice *and* earnings statements must include certain Sick and Safe Time information (see questions [#23](#), [#24](#) and [#33](#) below for more details).
- The prehire notice must additionally include:
  - Start date
  - Overtime pay rate and the threshold number of hours worked (per week) that qualifies an employee to earn overtime pay for any additional hours worked during that workweek (or basis of exemption or exception, if applicable)
  - A statement that tip sharing is voluntary, per state law (if applicable to the position)

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<sup>1</sup> See Question [#7](#) below and Sick and Safe Time FAQ’s for a more detailed explanation.

- Subsequent changes to the prehire notice require employee signature. (An exception exists for some wage raises; see question [# 16](#) below for more details.)
- The city's notice poster must be distributed to employees at start of employment.

**5.) Q: What happens in case of a dispute?**

**A:** Employees who believe they have not been timely and fully paid wages earned within the city should bring this issue to their employer's attention and/or file a report with the City of Minneapolis Department of Civil Rights. Alternatively, the state wage theft law may allow the [Minnesota Department of Labor and Industry](#) or Attorney General's Office to investigate potential state law violations.

**6.) Q: When does the City's Wage Theft Prevention ordinance take effect?**

**A:** The Minneapolis Wage Theft Prevention ordinance takes effect on January 1, 2020. (The State of Minnesota Wage Theft Law took effect during summer 2019.)

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

**A:** Employees who work at least 80 hours in a year within the geographic boundaries of Minneapolis are covered, regardless of the location of the employer. Covered employees working only occasionally in the city may file complaints with the Department of Civil Rights regarding earned but unpaid wages for hours worked within the City.

However, an individual who attends a convention, conference, training, educational class, or similar event in the City, but performs no other work in the City for an Employer, is not covered by the Ordinance.

An employer may make a reasonable estimate of an employee's time spent working in 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.

**8.) Q: What if an employer does not know at the time of hire how many hours per year an employee will work in Minneapolis?**

**A:** If it is reasonably foreseeable that an employee will likely work 80 hours in a year within the City, the employer should issue a prehire notice to avoid a likely ordinance violation.

If it is *not* reasonably foreseeable at the time of hire that an employee will work at least 80 hours in a year within the City (e.g., an employee is initially hired to work primarily outside of

Minneapolis, but a job transfer or change in responsibilities subsequently increases the amount of time that the employee spends working within the City), the employer should provide a prehire notice when it becomes reasonably foreseeable that the employee will work at least 80 hours in a year within the City.

**9.) Q: What happens in the case of a technical violation of the ordinance (e.g., a typo or failed or delayed delivery of a prehire notice or paystub) that has not resulted in any compensable harm to any employee?**

**A:** Technical violations that are resolved by an employer without measurable harm to an employee are not normally prioritized by the Department. Education and information are often more appropriate than fines or penalties in such situations.

In determining the amount of a fine (if any), the size of the employer, the gravity of the violation, the employer's good faith efforts to comply with the ordinance, and whether a violation was intentional or inadvertent are considered as a matter of course.

**10.) Q: What policies must be included in an employer's "list of personnel policies" and how brief of a "brief description" is acceptable?**

**A:** Employer-created written policies that regulate work or conduct and that could be used by the employer to support disciplinary action should be included on this list. If the title of the policy is not self-explanatory, a one sentence description may suffice to identify the topic or substance of the policy. Examples of policies with titles that are self-explanatory include "Policy Regulating Tardiness," "Time and Attendance Policy," or "Anti-discrimination, Harassment and Retaliation Policy." If a policy has not been provided to the employee, it should not be included on the list. A date or dates that each of the policies was provided to an employee must be recorded on the list. The list may be updated, as needed, on an ongoing basis. Employers must keep this list for as long as the employee is employed plus three years.

**11.) 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 Wage Theft Prevention Ordinance is strictly prohibited. Examples of exercising protected rights include: inquiring, disclosing, reporting, or testifying about any reasonably suspected violation of the ordinance. Where necessary, aggressive enforcement to protect employees' rights will be pursued by the City.

It is rebuttably presumed that retaliation has occurred if an employer within ninety (90) days of the employee's exercise of rights under the Wage Theft Prevention Ordinance materially changes the terms or conditions of the employee's employment, including terminating, constructively discharging, or reducing the employee's wages or benefits, or making other changes in the employment that affect the employee's future career prospects. The employer may rebut this

presumption by presenting clear and convincing evidence that the action was taken for a non-retaliatory purpose.

**12.) Q: Where can I ask more questions?**

**A:** Labor Standards Enforcement Division staff in the Minneapolis Department of Civil Rights provide technical clarification and answer questions from employers or workers. Contact (612) 673-3000 (**311**) or (612) 673-2157 (TTY) or [wagetheft@minneapolismn.gov](mailto:wagetheft@minneapolismn.gov) for more information. Regarding the state wage theft law, the Minnesota Department of Labor can also be contacted at 651-284-5070 or [dli.laborstandards@state.mn.us](mailto:dli.laborstandards@state.mn.us).

## **Ordinance Requirements:**

### **I. Prehire Notice**

**13.) Q: What information must be included in a prehire notice?**

**A:**

- Information required by the [State of Minnesota Wage Theft Law](#)
- Date on which employment is to begin
- Notice of rights under the Sick and Safe Time ordinance (notice about the employer's sick leave, paid time off, or other time off policy meeting Sick and Safe Time ordinance requirements); including:
  - **(1)** the method of accrual (e.g., rate at which time off is accrued per pay period or the amount of time that will be front-loaded);
  - **(2)** the date upon which the employee is first entitled to use accrued Sick and Safe Time (which must be no later than 90 days following start date), and
  - **(3)** the date upon which the employer's year for the purpose of Sick and Safe Time accrual (or frontloading) begins and ends (i.e., the "benefit year")
- A statement that tip sharing is voluntary, per state law (if applicable)
- The overtime policy applicable to the employee's position, including the rate or rates of pay and the threshold number of hours worked that qualifies an employee to earn overtime pay for any additional hours worked during that workweek (if applicable)

The prehire notice may provide this information by explicit reference to a specific section or page number (i.e., information sufficient to identify the relevant provision) of an employee handbook, collective bargaining agreement, or similar document.

Employees must sign the pre-hire notice to acknowledge its receipt. Electronic signatures are acceptable (see further description in questions [#15](#), [#18](#), and [#19](#)).

**14.) Q: When must an employer provide the prehire notice?**

**A:** No later than the first date on which the employee begins performing work for the employer, the prehire notice must be provided, either on paper or electronically.<sup>2</sup> If a paper copy is specifically requested by the employee, it must be provided as soon as reasonably possible and no later than the employee's start date.

**15.) Q: Can the prehire notice and notices of changes be provided electronically?**

**A:** An employer may choose to provide the prehire notice and notices of changes electronically unless the employee requests that they be provided in paper form. If any part of the notice is provided electronically (including by reference to an employee handbook which is only available electronically), employees must also be allowed access, at least upon request, to an employer-owned computer during regular working hours to review and print the notices.

If the employee requests that the notice be provided in paper form, the employer must do so. (For notices of changes, the employee must make this request at least 24 hours in advance, but once the request has been made the employer must honor it going forward.)

**16.) Q: What is required when the information on the prehire notice changes (such that the a previously issued prehire notice is no longer accurate)?**

**A:** When there are factual changes to the information required on the prehire notice, the employer must give notice of the change:

- **in writing**

**AND**

- **the change notice must be signed** by the employee\*  
(\*Signature is not required for a wage increase if the employee received notice, in advance of the increase, of the amount and date of the increase.)

Unless an exception applies, change notices must be signed by the employee before the employer applies the change to the employee.

**17.) Q: Does proper notice of a change require reissuance of the entire prehire notice?**

**A:** No, a "change notice" (i.e., written notice of a factual change to the information required on the prehire notice) does *not* require reissuance of the *entire* prehire notice. It requires notice of the information that is changing.

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<sup>2</sup> Many employers choose to provide this information during a hiring process or pre-employment process.

**18.) Q: Are employers required to collect employee signatures to properly issue a prehire notice (and subsequent changes)?**

**A:** Yes, signatures acknowledge receipt of the information and document the employee's receipt for future reference. The employer must retain this record (including a signed copy of the prehire notice, or an electronic copy and record of electronic signature), along with the date that the notice was received by the employee.

The signature requirement also applies to **change notices** unless the change is an increase in wages and the employee is informed in advance of the specific amount of the wage increase and the date on which it will occur.

**19.) Q: What is required of an electronic employee signature?**

**A:** Mere delivery (by email or otherwise) is *not* by itself enough to constitute a "signature." An electronic signature is acceptable if the employee affirmatively acknowledges receipt of the notice in a way that leaves some record.<sup>3</sup> The employer must then keep the record and the date that the employee received the notice. ([See State of Minnesota Department of Labor Wage Theft Q&A #'s 14 and #15 for more information.](#))

**20.) Q: How long must employers retain records of prehire notices issued to employees (including subsequent changes) and records of employee signatures?**

**A:** Employers must keep a signed copy of the notice (or electronic copy of signed notice or electronic copy and record of electronic signature) for as long as the employee is employed plus three years.

**21.) Q: Are employers required to provide *current* employees with the prehire notice?**

**A:** Yes, current employees are covered by the ordinance as of its effective date of January 1, 2020. Any current employee, as of January 1, 2020, who did not previously receive all the required information (including notice of the employer's sick leave, paid time off, or other time off policy which meets Sick and Safe Time ordinance requirements) must be provided with a pre-hire notice no later than during the first full pay period of 2020. Current employees who were already provided with all of the information required by the prehire notice (even if it was not all provided in a single notice) do not need to receive the information a second time.

**22.) Q: Is a new prehire notice required for a returning employee?**

**A:** If an agreement exists or if a reasonable expectation is held by both the employer and the employee that the employee will likely continue or return to work in the foreseeable future, then the employee likely has not separated from employment such that an entire prehire notice would

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<sup>3</sup> Electronic signatures are acceptable if they comply with Minn. Stat. § 325L.02.

need to be reissued. As always, *changes* to the information required in an existing prehire notice would require written notice of the information that is changing. (See question [#16](#) for more information.)

**23.) Q: How much information about Sick and Safe Time is required on the prehire notice?**

**A:** An employee reading the notice should reasonably be able to understand at least that employment benefits include some access to Sick and Safe Time (or PTO, vacation or other sick leave meeting ordinance requirements) including:

- How many hours the employee receives (e.g., the rate at which hours are accrued per pay period or the amount frontloaded)
- The year used by the employer for determining accrual and carryover (or frontloading); and
- The earliest date that employee use may begin (which must be no later than 90 days following start date)

To learn more about these concepts, please see Sick and Safe Time Ordinance FAQ's numbers 7, 8, 17, and 18.

**24.) Q: What is the significance of the particular "year" used for Sick and Safe Time ordinance compliance?**

**A:** Under the Sick and Safe Time ordinance, employers may calculate leave accrual (or determine when time will be frontloaded) using a consecutive 12-month period of time as determined by an employer. Most employers will find it helpful to use one of the following:

- Calendar year that runs from Jan. 1 to Dec. 31
- Tax year
- Fiscal year
- Year running from an employee's anniversary date of employment

Employers must use a consistent measuring period from year to year.

**25.) Q: Is the precise start date (on which work "is to begin") required on the prehire notice in all cases?**

**A:** Yes, unless the start date cannot be determined ahead of time despite reasonable diligence, in which case a good faith estimate or other description of the agreement is acceptable.

**26.) Q: Is a statement regarding (voluntary) tip sharing required on every prehire notice?**



**A:** This is required only for positions that customarily receive gratuities. For those positions, the prehire notice must clearly state that, per state law, tip sharing, or tip pooling, among employees is *not* required by the employer and is voluntary.

For more information on state law regarding tip sharing, please see the Minnesota Department of Labor and Industry website at <https://www.dli.mn.gov/business/employment-practices/tips-tip-credit>.

**27.) Q: What overtime policy must be included on the prehire notice?**

**A:** State and federal law require employees to be paid overtime, when applicable. Employer policies or contractual agreements regarding overtime rate and when it applies may be more generous than that required by law. The law, employer policy, or contractual agreement applicable to the employee's position must be included on the prehire notice. The information provided must be sufficient for the employee to understand when that employee will be paid at an overtime rate and what rate(s) will apply.

For more information regarding overtime regulation see United States Department of Labor guidance at [https://www.dol.gov/whd/overtime/fact\\_sheets.htm](https://www.dol.gov/whd/overtime/fact_sheets.htm) and the Minnesota Department of Labor and Industry guidance at <https://www.dli.mn.gov/business/employment-practices/overtime-laws>.

## **II. Minneapolis Labor Standards Notice Poster**

**28.) Q: Are employers required to hang employee notice posters in the workplace (e.g., on an announcement board or in a break room)?**

**A:** Yes. Employers must display an employee notice poster within each of their facilities in Minneapolis in a location visible and accessible to employees.

Copies in various languages are available for download from the City of Minneapolis website. Employers must display the poster in English and in any language spoken by at least 5% of the employees at that work location, if published by the City.

**29.) Q. Are employers also required to provide employees with a copy of the employee notice poster at the start of employment?**

**A:** Yes. Employers must also distribute notice posters, in electronic or printed form, to all employees no later than the first date on which the employee begins performing work for the employer.

Copies in various languages are available for download from the City of Minneapolis website. If the employer is made aware that an employee prefers one of these languages, the employer must provide the notice poster in the employee's preferred language.

### **III. Earnings Statements**

**30.) Q: Are employers required to provide employees with earnings statements (e.g., paystubs)? When?**

**A:** Employers are required to provide each employee with an earnings statement at the end of each and every pay period during which the employee earns wages.

**31.) Q: What is a pay period?**

**A:** It defines the frequency with which employees are paid. On the prehire notice, employers are required to advise employees of the number of days in a pay period and the regularly scheduled payday.<sup>4</sup> These two requirements together create a regular, predictable schedule for the payment of wages. The employer is required to adhere to the pay period and pay day that has been communicated to employees.

**32.) Q: May earning statements be provided to employees electronically?**

**A:** Yes, employers may provide earning statements electronically if employees have access to a computer and time during work hours to review and print the statements. If the employee requests that earning statements be provided in paper form, the employer must comply with that request on an ongoing basis.

**33.) Q: What information must be included on an earnings statement?**

**A:** Earnings statements at the end of each pay period must include:

- All information required by the [State of Minnesota Wage Theft Law](#)
- The current balance of sick and safe time hours that have been accrued and are still available for use (i.e., because they have not yet been used)

**34.) Q: Why does the City require sick and safe time (or other qualifying leave) data on earnings statements (e.g., paystubs), in addition to existing requirements under state law?**

**A:** Without this information, employees' access to sick and safe time can be easily misunderstood. To access sick leave, a reasonable employee must be able to easily identify the current balance available for use.

**35.) Q: How long must employers retain records of earning statements?**

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<sup>4</sup> Minn. Stat. § 181.032(d)(6).

**A:** Employers must keep copies of all earning statements for three years after the date that the statement was provided to the employee.