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## Minnesota Wage Theft Statute, Part II: New Notice, Disclosure, and Recordkeeping Requirements

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In [our previous article](#), we summarized the key provisions of Minnesota's new "wage theft" law. This article focuses specifically on the notices and disclosures employers are required to provide to their employees under the law, as well as new recordkeeping requirements.

The Minnesota Department of Labor and Industry (DLI) has released [a guidance document](#) and [a wage theft question and answer page](#) clarifying the new law, and it plans to issue further guidance in the coming weeks. Further, it has issued [a sample notice form](#) businesses can use to comply with the new notice requirements. (Alternatively, employers can develop a written notice containing all nine areas of information listed below.)

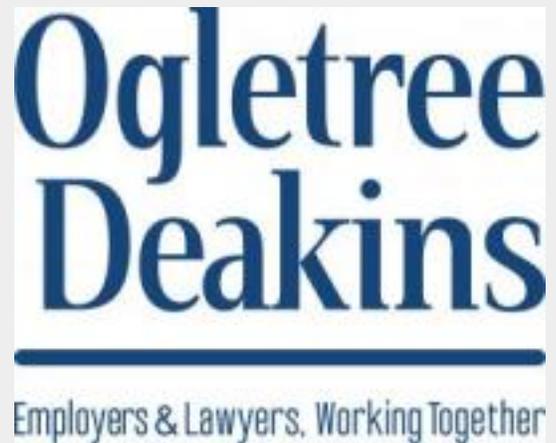
### Required Notice to New Employees—Amendments to Minnesota Statutes Section 181.032

Beginning July 1, 2019, Minnesota employers will be required to provide a new and detailed notice to newly hired employees when they begin work.

Section 181.032(d) states: "At the start of employment, an employer shall provide each employee a written notice containing the following information:

- (1) the 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, 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;
- (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."

DLI has not clarified whether employers will have a "grace period" to implement this notice requirement. When asked about this issue, DLI responded that its "primary focus for the next few months will be on providing



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employers with the information and assistance they need to understand and implement . . . the law.”

Section 181.032(e) states the following:

The employer must keep a copy of the notice under paragraph (d) signed by each employee acknowledging receipt of the notice. The notice must be provided to each employee in English. The English version of the notice must include text provided by the commissioner that informs employees that they may request, by indicating on the form, the notice be provided in a particular language. If requested, the employer shall provide the notice in the language requested by the employee. The commissioner shall make available to employers the text to be included in the English version of the notice required by this section and assist employers with translation of the notice in the languages requested by their employees.

Section 181.032(f) states: “An employer must provide the employee any written changes to the information contained in the notice under paragraph (d) prior to the date the changes take effect.”

The law does not require employers to deliver the notice to current employees, though DLI recommends this as a best practice. However, DLI has specified that “when an employer plans to make changes to information required to be provided in the written notice that affect employees who have not received a written notice, the employer must provide those employees a written notice that includes all the information - including the changes - required under the new law prior to the date the changes take effect.”

Furthermore, as the statute does not precisely define “the start of employment,” employers may want to provide this notice either accompanying (or as part of) an offer letter to the new employee or on the new employee’s first day of employment.

Note that employers must maintain the signed copies of this notice for 3 years either at the place where employees are working or in a manner that allows the employer to make the records readily available to DLI upon demand within 72 hours.

### **New Earnings Statement Requirements—Amendments to Minnesota Statutes Section 181.032**

The new law also added requirements to the information employers must provide to employees in their paystubs. These requirements were added to the “paystub” provisions of section 181.032.

As amended, section 181.032 of Minnesota Statutes now requires the periodic earnings statement (paystub) for each employee (both new and existing) to contain all of the following information:

- (1) “the name of the employee;
- (2) 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;
- (3) allowances, if any, claimed pursuant to permitted meals and lodging;
- (4) the total number of hours worked by the employee unless exempt from chapter 177;
- (5) the total amount of gross pay earned by the employee during that period;
- (6) a list of deductions made from the employee’s pay;
- (7) the net amount of pay after all deductions are made;
- (8) the date on which the pay period ends;
- (9) the legal name of the employer and the operating name of the employer if different from the legal name;
- (10) the physical address of the employer’s main office or principal place of business, and a mailing address if different; and
- (11) the telephone number of the employer.”

Items 2, 3, 10, and 11 above are the newly required or modified categories of information that must be included on paystubs. Employers can work with their payroll department or payroll provider to make certain that employee earnings statements contain all of this information beginning with the first payroll on or after July 1, 2019.

### **New Personnel Policy/Employee Handbook Recordkeeping Requirement—Amendments to Minnesota Fair Labor Standards Act Section 177.30**

Amendments to the Minnesota Fair Labor Standards Act (MFLSA) in section 177.30 of Minnesota Statutes will require employers to maintain records of all personnel policies provided to employees, including the date the policies were given to those employees and a brief description of the policies.

As amended, the MFLSA requires that every employer (subject to sections 177.21 to 177.44) “must make and keep a record of:

- (1) the name, address, and occupation of each employee;
- (2) the rate of pay, and the amount paid each pay period to each employee;
- (3) the hours worked each day and each workweek by the employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate;
- (4) a list of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies; [and]
- (5) a copy of the notice provided to each employee as required by section 181.032, paragraph (d), including any written changes to the notice under section 181.032, paragraph (f).”

For most employers, these records must be kept for 3 years in the premises where the employee works and must be readily available (within 72 hours) for the commissioner to inspect on demand. Failure to maintain these records (including the new employee notice now required under section 181.032) may result in a fine of up to \$1,000 for each failure to maintain records and fines up to \$5,000 for each repeated failure.

Employers often distribute their personnel policies or employee handbooks to new employees at the time they are hired. The amendments to the MFLSA do not appear to change this practice. However, employers may want to consider implementing a process to uniformly obtain an employee’s signed, written acknowledgment of receipt of an employee handbook or other personnel policies at the start of employment. Further, employers should document the date of distribution (and issuance) of the policies and retain these records.

For employers with policies that are contained in an employee handbook, maintaining a copy of the handbook, or policies or the table of contents from handbook, will probably suffice. But if there are any other personnel policies not included in the handbook, employers may want to provide those to employees and receive their acknowledgement as well. DLI has not yet provided guidance as to whether documents such as safety manuals, operations procedures, etc. would qualify as “personnel policies” under this new law.

### **Key Takeaways**

The Minnesota wage theft law notice and disclosure provisions impose additional obligations on employers. The alternative language requirements for the new notice to be given at the start of employment may prove onerous for some employers, but perhaps DLI will publish forms in different languages in the future as it and other governmental units have done under other laws in the past. Employers may want to consult with their payroll providers to ensure that paystubs comply with the new law, and employers should implement the use of the DLI sample notice form or its equivalent beginning July 1, 2019. Finally, employers must retain records as required by the law.

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