

Common Employment Issues and Where to Go for Help



The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity and respect

Wages

Some employees receive less in wages than they expect. This might occur because an employer does not pay for all hours worked, makes unexpected deductions from wages, misses a scheduled payday, or simply fails to pay employees at all. Here are some of the Minnesota laws that apply to wages:

- **State minimum wage.** Minnesota law requires an employer to pay an employee a minimum hourly wage and overtime after 48 hours of work each week. (Minn. Stat. §§ 177.24-25.) Some cities, including Minneapolis and Saint Paul, have enacted local minimum wage ordinances that require some employers to pay an hourly wage that is higher than the state minimum wage. These ordinances are enforced locally. Employees can contact their city or county government to determine whether their jobs are covered by a local ordinance.
- **Federal minimum wage.** Federal law also applies to many large Minnesota employers. Federal law requires an employer to pay overtime after 40 hours of work each week. (29 U.S.C. § 207)
- **Regular paychecks.** Minnesota law generally requires employers to pay employees wages on a regularly scheduled payday at least once every 31 days. (Minn. Stat. § 181.101.)
- **Payment on separation.** When an employer discharges an employee, the employer is required to immediately pay wages or commissions actually earned and unpaid. (Minn. Stat. § 181.13.) When an employee quits, the employer is usually required to pay wages due not later than the first regularly-scheduled payday following the employee's last day of work. (Minn. Stat. § 181.14.) If an employer fails to pay the full wages owed, and if the employee submits a written demand for payment, the employer

may have to pay a penalty if the employer fails to pay within 24 hours. (Minn. Stat. §§ 181.13-.14.)

- **Deductions.** An employer may not make wage deductions without the employee's written agreement except in limited circumstances. (Minn. Stat. §§ 177.24, subd. 4, 181.79.) For instance, the Minnesota Supreme Court ruled that a bar could not take servers' tips when the cash register was short or customers walked out without paying their tabs. *See Karl v. Uptown Drink*, 835 N.W.2d 14 (Minn. 2013).
- **State regulator.** The Minnesota Department of Labor and Industry is the state agency with authority to investigate violations of and enforce Minnesota's wage and hour laws. (Minn. Stat. § 177.27.) The Department can be contacted as follows:

Minnesota Department of Labor and Industry

443 Lafayette Road North

St. Paul, MN 55155

(651) 284-5070

dli.laborstandards@state.mn.us

- **Federal regulator.** The United States Department of Labor is the federal agency with authority to enforce federal wage and hour laws. The Department can be contacted as follows:

United States Department of Labor

Wage and Hour Division

Tri-Tech Center, Suite 920

331 Second Avenue South

Minneapolis, MN 55401-2233

(612) 370-3341 or (866) 487-9243

- **Private claims.** In most cases, employees may also bring their own cases in court to seek money owed, liquidated damages, penalties, and attorney fees. (Minn. Stat. §§ 177.27, subd. 8, 181.171.)

Benefits

Minnesota law generally doesn't require employers to provide employees with fringe benefits in addition to wages. Some employees receive benefits at work, like vacation, sick time, and employer contributions to retirement. These benefits are based on an agreement between an employer and employee. An employer that does not pay agreed upon benefits to an employee may be subject to a "breach of contract" claim in court.

Other benefits are required by law

- **Parental leave under state law.** Minnesota law requires employers with 21 or more employees to provide unpaid parental leave for up to 12 weeks when an employee's child is born or adopted. (Minn. Stat. §§ 181.940-941.) Minnesota's sick leave law requires employers that employ 21 or more employees to allow employees to use their paid sick leave to care for spouses, children, parents, grandchildren, and grandparents. (Minn. Stat. §§ 181.940, 181.9413.) The Minnesota Department of Labor and Industry is the state agency with authority to investigate and enforce Minnesota's parental and sick leave laws. (Minn. Stat. § 177.27.) (See above for contact information.)
- **Parental leave under federal law.** The federal Family & Medical Leave Act (FMLA) generally requires public employers and private employers with 50 or more employees to provide up to 12 weeks of unpaid, job-protected leave per year for an eligible employees who are ill or need to care for immediate family members with serious health conditions. (29 U.S.C. § 2611, et seq.) The United States Department of Labor is the federal agency with a authority to enforce the FMLA. (See above for contact information.)
- **Private claims.** If an employer violates these laws, an employee may also sue the employer and seek damages, attorney fees, and other relief from a court. (Minn. Stat. § 181.944.)
- **Local ordinances.** Some cities, including Minneapolis and Saint Paul, have enacted ordinances requiring some employers to provide sick leave benefits. These ordinances are enforced locally. Employees can contact their city or county government to determine whether their job is covered by a local ordinance.

Personnel Files

An employer's personnel file might provide information that would be of assistance to an employee.

- **Your file.** Minnesota law requires an employer to provide an employee's personnel file to the employee upon request, if the employee makes the request in good faith. (Minn. Stat. § 181.961.) A current employee may request to review the file every six months. An ex-employee may review the file once per year so long as the employer maintains the file. (Minn. Stat. § 181.961, subd. 1.)
- **Inspection rights.** An employer must comply with an employee's written request to review the file within 7 working days if the record is located in Minnesota and within 14 working days if the record is located outside Minnesota. (Minn. Stat. § 181.961, subd. 2.) The employer may not charge a fee for a copy. (Minn. Stat. § 181.961, subd. 2.)
- **Disputing information.** If an employee disputes specific information in the employee's personnel record, and if the employer and employee cannot agree to remove or revise the disputed information, the employee may submit a written statement explaining the employee's position regarding the disputed information. (Minn. Stat. § 181.962, subd. 1.)
- **State regulator.** The Minnesota Department of Labor and Industry is the state agency with authority to enforce Minnesota's statutes governing personnel files. (Minn. Stat. § 181.9641.) (See above for contact information.)

Employee or Independent Contractor

Some workers have difficulty figuring out whether they are an employee or independent contractor. Minnesota's wage and hour laws do not apply if the worker is considered to be an independent contractor under Minnesota law. Whether a worker is an independent contractor or an employee is a complicated issue, based on a number of factors. Generally, a worker is an employee when an employer controls when the worker works, what the worker does, and how the worker does his or her job. A worker is an independent contractor when the worker controls when, where, and how a job gets done. (See, e.g., Minn. Stat. §§ 176.043, 181.723; Minn. R. ch. 5224.) You may wish to consult with an attorney if you have questions whether you are an employee or independent contractor.

Working Conditions

The state and federal Occupational Safety and Health Act (OSHA) laws require employers to provide employees with a safe and healthy work environment free from any known hazards that can cause death, injury, or illness. Employers must provide employees with information about any hazardous chemicals or harmful physical agents that the employees may be exposed to at work. Employers must also provide employees with necessary personal protective equipment and training.

- The Department of Labor and Industry is the state agency with authority to investigate and enforce OSHA violations. (See above for contact information.) Employees may file a complaint with the Minnesota Department of Labor and Industry regarding health and safety hazards in the workplace. Minnesota law prohibits an employer from retaliating or discriminating against an employee for reporting a workplace safety concern. (Minn. Stat. § 182.669.)
- An employee who believes he or she was discriminated against for making an OSHA complaint may also bring his or her own discrimination case in district court. (Minn. Stat. § 182.669, subd. 1.)

Whistleblower Protection

Minnesota's Whistleblower Act prohibits an employer from firing, disciplining, threatening, or otherwise discriminating against an employee because the employee, in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law, or refuses an employer's order to perform an action that the employee objectively believes violates such a law. (Minn. Stat. § 181.932.) An employee who is retaliated against in violation of the Act may bring a private civil action in court to enforce the Act. (Minn. Stat. § 181.935.)

Employment Discrimination

If you are an "at will" employee, your employer generally does not need a reason to fire you. The Minnesota Human Rights Act, however, does generally prohibit a Minnesota employer from discriminating against an employee or job applicant based on the employee's membership in a protected class, unless it is a bona fide occupational qualification. (Minn. Stat. § 363A.08, subd. 2.)

- Race, color, creed, religion, national origin, sex, marital status, familial status, disability, status with regard to public assistance, membership or activity in a local commission, sexual orientation, and age are protected classes for employment purposes.
- The Minnesota Department of Human Rights is the State agency with authority to investigate and enforce violations of the Human Rights Act. (Minn. Stat. § 363A.28.) The Department may be contacted as follows:

Minnesota Department of Human Rights

Freeman Building
625 Robert Street North
St. Paul, MN 55155
(651) 539-1100 or (800) 657-3704

- An employee may also file a discrimination claim with the federal Equal Employment Opportunity Commission. The Commission has the authority to enforce similar federal laws prohibiting employment discrimination. The Commission may be contacted as follows:

Equal Employment Opportunity Commission

Towle Building
330 South Second Avenue, Suite 720
Minneapolis, MN 55401-2224
(800) 669-4000

- An employee may also bring his or her own discrimination case in court. (Minn. Stat. § 363A.33.)

The Minnesota Attorney General's Office cannot provide you with legal advice. The information in this pamphlet is only intended to provide a general overview of some of the pertinent laws and the regulatory agencies that have authority to enforce them. For more information, you should contact the regulatory agency indicated above or consult with a private attorney.