

LABOR STANDARDS

GENERAL INFORMATION

Wages, overtime pay and record keeping requirements are regulated at the federal level by the Fair Labor Standards Act, 29 USC § 201 *et seq.*; 29 CFR parts 510 to 794 and at the state level by the Minnesota Fair Labor Standards Act, Minn. Stat. § 177. Each act specifies the employers and employees to which it applies, but where the Minnesota act and the federal act are different, the law providing more protection for the employee or setting the higher standard applies. The Fair Labor Standards Act (FLSA) is administered by the Wage and Hour Division of the Employment Standards Administration at the U.S. Department of Labor (www.dol.gov). The Minnesota Fair Labor Standards Act is administered by the Labor Standards Division of the Minnesota Department of Labor and Industry (www.dli.mn.gov).

This section discusses provisions of the federal act and the Minnesota act pertaining to persons covered, minimum wage and overtime requirements, prevailing wage requirements, and wage records.

Before the implementation of federal regulations affecting the definition and compensation of executive, administrative, professional, computer and highly compensated outside sales employees, federal statutes and regulations set the higher standard for overtime compensation. Under current federal regulations, however, Minn. Stat. and regulations may set the higher standard. In that situation employers who formerly were required to pay overtime under federal law may no longer be required to do so but will be required to pay overtime under Minnesota law.

Employers should familiarize themselves with the federal and state requirements for labor standards in general, and the new overtime standards in particular, by visiting the websites of the United States Department of Labor, www.dol.gov (Compliance Assistance information and assistance), and the Minnesota Department of Labor and Industry www.dli.mn.gov. In particular the Minnesota Department of Labor and Industry has put up on its website an excellent “Recommended Analysis” tool for employers to use in determining which standards of overtime – federal or state – apply. That analysis is found at the “Labor Standards” section of the above referenced website.

Additional addresses and telephone numbers for direct contact with the U.S. Department of Labor and the Minnesota Department of Labor and Industry are provided in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*.

Employers should still assume that they are covered by the federal act unless they are told otherwise by legal counsel.

PERSONS COVERED

Federal Act

The federal act covers all workers employed by: 1) hospitals and residential care facilities; 2) public or private preschools, elementary or secondary schools, and institutions of higher education; 3) enterprises with annual gross sales of \$500,000, or more, whose workers are engaged in interstate commerce, produce goods for interstate commerce, or handle, sell, or otherwise work on goods or materials that have been moved in or produced for interstate commerce; and 4) public agencies.

Other employees will be covered by the federal act if they are individually engaged in interstate commerce, the production of goods for interstate commerce, or in any closely related process or occupation directly essential to such production. Such employees include those who: work in communication and transportation; handle, ship or receive goods moving in interstate commerce; regularly use the mails, telephone, fax, or e-mail for interstate communication or who keep records on interstate transactions; regularly cross state lines in the course of their work; and perform clerical, custodial, maintenance or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce. Due to the broad nature of this category, an employer that wishes to assert that its employees are not involved in interstate commerce should seek the advice of counsel.

Exceptions to the federal act are discussed in the section on “Federal Act Exemptions” below.

The federal Fair Labor Standards Act (and other federal employment laws, such as the Occupational Safety and Health Act, unemployment insurance, and anti-discrimination laws) apply to working welfare recipients in the same manner as it applies to other workers. The welfare law does not exempt welfare recipients from these laws. Welfare recipients would probably be considered covered employees in many, if not most, of the work activities under the welfare law, and in “workfare” arrangements. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the federal act.

Further information on the federal act may be obtained by contacting the United States Department of Labor, Wage and Hour Division at the local address and telephone number provided in the Resource Directory section of the *Guide*. If you have a question about the federal act and welfare recipients, a Wage and Hour publication entitled “How Workplace Laws Apply to Welfare Recipients” is available through the Wage and Hour Division, and can be found in the compliance information section of the Wage and Hour Division website.

Minnesota Act

The Minnesota act generally applies to all employers and employees in Minnesota who are not covered by the federal act. Also, the Minnesota Act will apply to employers and employees subject to the federal act when the Minnesota Act would provide more protection to the employee or would set a higher standard. Exceptions to the Minnesota act are discussed in the section on “Minnesota Act Exemptions” below.

EXEMPTIONS

Federal Act Exemptions

The federal act exempts some employees from federal minimum wage or overtime requirements, or both. These exemptions are carefully defined and applied on a workweek by workweek basis. A business that wishes to pay a worker as an exempt employee should carefully check the exact requirements to make sure the exemption is applicable. The fact that an employee is paid a salary or commission rather than an hourly wage does not by itself determine that an employee is exempt from overtime or minimum wage requirements. A job title is also insufficient for determining exempt or non-exempt status. All of the specific requirements for the exemption must be met in order for the employee to be classified as exempt.

Exemptions from Federal Minimum Wage and Overtime Requirements. In general, the following are exempt from both the minimum wage and overtime requirements of the federal act: executive, administrative and professional employees and outside sales persons, employees in certain computer related occupations, employees of certain seasonal or recreational establishments, employees engaged in fishing operations, and farm workers employed by anyone who used no more than 500 work-days of farm labor in any calendar quarter of the preceding calendar year. Casual baby-sitters, and persons employed as companions to the elderly or infirm in a private residence may also be exempt from the minimum wage and overtime requirements.

Exemptions from Federal Overtime Pay Requirements Only. Most exempt employees fall into one of four classifications: executive, administrative, professional, or outside salesperson.

To qualify as an exempt executive, administrative or professional employee, an employee generally must meet certain tests regarding his or her job duties and be paid on a salary or fee basis at not less than \$455 weekly (\$23,600 annually), exclusive of board, lodging, or other facilities. The salary requirements do not apply to teachers, employees practicing law or medicine, or outside sales employees.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.
- Business owners (those with at least a 20 percent ownership) who are "actively engaged in its management" are also considered exempt employees without regard to the salary threshold.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skill.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtain orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those

established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Minnesota Act Exemptions

Like the federal act, the Minnesota act exempts certain workers from its coverage. A business that wishes to rely on any of the exemptions should check the law carefully to be sure that the exemption is applicable to the firm's situation.

Exemptions from Minnesota Minimum Wage and Overtime Requirements. The Minnesota act covers all employees of an employer unless there is a specific statutory exemption. The following are some of the more common exemptions for for-profit employers.

- Individuals employed in a *bona fide* executive, administrative, or professional capacity, or a sales person who conducts no more than 20 percent of sales on the premises of the employer. This exemption is discussed more fully under "Exemptions from Minnesota Overtime Pay Provisions" below.
- Taxicab drivers.
- Individual babysitters.
- Retail or service employees paid on a commission basis if the regular rate of pay exceeds one-and-one half times the minimum wage.
- Some salaried farm employees and farm employees under age 18 except corn detasslers and hand field workers when one or both of the minor's parents or physical custodians also are hand field workers. (Corn detasslers under age 18 are exempt from the state minimum wage provision, but must be paid for overtime.)

Other exemptions apply to certain employees of governmental units, nonprofit organizations and religious groups. Information on these exemptions may be obtained from the Labor Standards Division of the Department of Labor and Industry.

Exemptions from Minnesota Overtime Pay Requirements. The requirement for employers to pay employees premium pay for overtime is determined by whether the worker is an exempt or nonexempt employee. The fact that an employee is paid a salary or commission rather than an hourly wage does not by itself determine whether overtime pay is required. The specific requirements of the law must be met. Four types of workers are exempt from overtime pay requirements. They are: executive, administrative, professional, and outside sales workers.

- **Executive:** An employee who is paid no less than \$250 a week in salary may qualify for exemption from overtime if: (1) the work consists mainly of the management of the business or management of a department or some other division of the company, and (2) if the employee regularly supervises and directs the work of at least two employees in the department or division (working foremen do not qualify.)
- **Administrative:** An employee who is paid no less than \$250 a week in salary may qualify for exemption from overtime if: (1) the work performed is office or nonmanual work directly

involved in management policy or the general operations of the company or its customers, and (2) if the work calls for use of discretion and independent judgment. An employee must have enough authority to make policy decisions.

- **Professional:** An employee who is paid no less than \$250 a week in salary may qualify as an exempt employee if: (1) the majority of the work is in performance of tasks which assume a knowledge in an advanced field of learning, teaching or science, with consistent use of discretion and judgment; or (2) if the work performed is in a field of artistic endeavor, such as invention or use of imagination or talent. Generally, an advanced degree is a requirement of the job.
- **Outside Sales Worker:** This person is hired for, and is usually away from the place of business for, the purpose of making service calls or obtaining orders and contracts for products or services provided by the employer. The working hours require spending at least 80 percent of the workweek outside the employer's premises. In addition the outside work may not be conducted at any one fixed place, even if not owned by the employer.

Employees earning less than the amounts specified in each category above may still qualify as exempt, but they must fulfill work requirements more detailed than indicated above.

Other employees subject to the Minnesota act but exempt from overtime requirements are:

- Seasonal employees of a carnival, circus, fair, or ski resort.
- Construction workers of on-farm silos or installers of appurtenant equipment who are paid on a unit or piece rate.
- Salesperson, parts person, or mechanic paid on a commission or incentive basis if employed by a non-manufacturing establishment primarily engaged in selling automobiles, trailers, trucks or farm implements to ultimate purchasers.
- Employees of a retail or service establishment if the regular rate of pay is in excess of one and one half times the minimum wage and more than half the compensation represents commissions on goods or services.

MINIMUM WAGE REQUIREMENTS

Federal Minimum Wage Requirements

The federal minimum wage to be paid by covered employers is \$7.25 an hour. These employers include businesses that produce or handle goods for interstate commerce; businesses with annual dollar volume of business of \$500,000 or more; and certain other businesses, including hospitals and nursing homes, private and public schools, and federal, state and local government agencies.

Minnesota Minimum Wage Requirements

The Minnesota minimum wage is \$5.25 for small employers (annual sales volume of less than \$625,000) and \$6.15 for large employers (annual sales volume of more than \$625,000); a \$4.90 training wage may be paid to new employees under the age of 20 during their first 90 days of employment.

There is no longer a lower rate for minors. By state law, there is no tip-credit allowance.

In cases where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

Minimum wage rates apply to all hours work, whether part time or full time. Employers are required to pay for all hours worked including waiting time, call time, training time and any other time the employee is restricted to the premises of the employer.

Updating Wage Postings

Employers are required to post a current (updated) notice of the applicable federal minimum wage rates and related obligations. Existing notices containing the prior federal minimum wage rate will be outdated and noncompliant. Failure to post an updated notice may result in fines of up to \$10,000. Updated posters may be downloaded free of charge from the U.S. Department of Labor at <http://www.dol.gov/compliance/topics/posters.htm>.

Wages Using Payroll Card Accounts

Employers are allowed to pay employee wages via payroll card accounts. Employers are not required to use payroll card accounts, even if requested by employees.

Payroll debit cards allow an employee's net pay to be applied to a payroll account. The employee can then use the card to make purchases and withdraw cash at ATMs. Payroll accounts allow wages to be electronically transferred, eliminating the need for check cashing charges.

Before using payroll card accounts, employers first must file the required Department of Labor and Industry's registration form found at <http://workplace.dli.mn.gov/paycard/>. In addition before using payroll card accounts, an employer must provide employees written disclosure, in plain language, of all the employee's wage payment options. The disclosure must also include certain information, such as fees that would apply.

Use of a payroll card account cannot be a condition of hire or of continued employment, and employers may use the accounts only for those employees who voluntarily consent in writing on the disclosure form. The employer must retain the signed disclosure and provide a copy to the employee.

Employers must not charge employees any initiation, participation, loading or other fees to receive their wages via payroll card accounts, and payroll card issuers must not impose inactivity or dormancy fees. Also, any allowable fees imposed by the employer or the payroll card issuer that were not disclosed to the employee at the time of providing written consent may not be deducted or charged.

The law requires that an employee must be able to withdraw, by a free transaction, wages transferred to the account on the employee's regular payday. Employers are required to provide employees, upon request, one free transaction history each month.

The linking of payroll cards and accounts with credit, including loans against future pay and cash advances, is prohibited. Employers are also prohibited from using personal information generated by an employee's use or possession of the card or account for any purpose other than processing transactions and administering the account.

Employers may continue to pay employees via cash, paycheck and direct deposit. Employees may opt out of direct deposit by written objection to the employer. Employer's must give employees wishing to switch from payroll card accounts to another payment method a written form on which to indicate the change; the employer has 14 days to implement the new requested method.

OVERTIME PAY REQUIREMENTS

Federal Overtime Pay Requirements

The Federal act requires that covered non-exempt employees receive overtime pay at a rate of one and one-half times their regular rate of pay after 40 hours of work in a workweek. Exemptions from the federal overtime pay requirements are addressed above.

A workweek is a period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer, but the established workweek must remain consistent. For purposes of computing overtime pay, each workweek stands alone; there can be no averaging of two or more workweeks (except for hospital or nursing home employees on an "8 and 80").

Overtime pay must be based on the regular rate. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (i.e., non-discretionary bonuses, incentive pay, shift differentials), although some statutory exceptions may apply. To calculate the regular rate, divide all pay received by all hours worked in the work week.

Overtime compensation must be paid in cash wages. There is an exception for public sector employees who can accrue hours worked over 40 as compensatory time to be paid out at a rate of time and one-half, in lieu of cash wages.

Minnesota Overtime Pay Requirements (Minn. Stat. § 177.25)

As a general rule, employers covered by the Minnesota act are required to pay nonexempt employees time and a half for all time worked in excess of 48 hours in one workweek. Each workweek stands by itself. The employer may not average the worker's hours over the two weeks. A special overtime law, Minn. Stat. § 177.25, Subd. 2, applies to hospitals and the health care field.

Exemptions from the Minnesota overtime pay requirements are addressed earlier in this section. An exception to the 48 hour rule for payment of overtime appears at Minn. Stat. § 177.41-177.44. This statute, the Minnesota Prevailing Wage Law, requires that employees who work on state-funded construction projects be paid time-and-one-half for all time worked in excess of eight hours per day and 40 hours per week.

Premium pay need not be made for a period when no work is performed, such as sick days, holidays, and vacations. Overtime applies only after 48 hours of actual work, not hours paid.

PREVAILING WAGE LAWS

Both the federal government and the State of Minnesota by law require contractors who are awarded government funds for public works projects to pay their employees the prevailing wage for the locality in which the project is located. The Minnesota Legislature extended the provisions of its prevailing wage law to recipients of state funds for certain economic development projects.

The law applies to three forms of state financial assistance:

- Economic development grants where a single business receives \$200,000 or more of the grant proceeds;
- Loans made by a state agency for economic development purposes where the loan recipient receives \$500,000 or more of the loan proceeds, and
- Sales tax reductions or abatements made for economic development purposes in certain geographic areas.

Economic development is defined as financial assistance provided to a person directly or to a local unit of government or nonprofit organization on behalf of a person who is engaged in the manufacture or sale of goods and services, except for financial assistance provided for certain housing projects.

The law requires the person receiving or benefiting from the financial assistance, as a condition of receiving the assistance, to certify to the Commissioner of Labor and Industry that laborers and mechanics assigned to the project will be paid the prevailing wage rate for the area. The prevailing wage rate is determined periodically by the Department of Labor and Industry.

The federal government enforces the Davis-Bacon and related acts, which require the payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction, and the Service Contract Act, which requires the payment of prevailing wage rates and fringe benefits on contracts to provide services to the federal government.

The prevailing wage rate is defined as the hourly basic rate of pay plus the employer's contribution for health and welfare, vacation, pension, and other economic benefits paid to the largest number of workers engaged in the same class of labor in the area. Area is defined as the county or other locality from which labor for any project normally is secured.

Current prevailing wage rates are available on the website of the Minnesota Department of Labor and Industry at www.dli.mn.gov/LS/PrevWage.asp.

RECORD KEEPING REQUIREMENTS

Federal Record Keeping Requirements

Federal employer record keeping requirements are specified by regulation of the U.S. Department of Labor. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. The following records must be kept on all employees subject to the minimum wage and overtime provisions of the federal act.

The following is a listing of the basic records that an employer must maintain.

- Employee's full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of week when employee's workweek begins.
- Hours worked each day.
- Total hours worked each workweek.
- Basis on which employee's wages are paid (e.g., "\$6 an hour", "\$220 a week", "piecework").
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period;
- Date of payment and the pay period covered by the payment.

Records required for exempt employees differ from those for nonexempt workers and special information is required on employees working under uncommon pay arrangements or to whom lodging or other facilities are furnished. Firms that employ industrial home workers must keep records in handbooks supplied by the Department of Labor.

In addition to the record keeping requirements imposed for records relating to employee compensation, a number of federal statutes impose record retention requirements on documents associated with employee recruitment and selection. These records include job postings and advertisements, test papers, interview records, lists of applicants, applicant resumes, ranking and evaluative criteria and other records. Requirements range from six months to five-year retention. Each year a comprehensive update of federal record retention requirements is published in the *Federal Register*. A business or government reference librarian can direct employers to the latest compilation.

Minnesota Record Keeping Requirements (Minn. Stat. § 177.30)

Employers covered by the Minnesota act are required to make and retain for at least three years the following records for every worker:

- Employee's name and home address;
- Occupation and rate of pay;
- Amount paid each pay period to each employee;
- Hours worked each day and each workweek, including starting and ending hours each day, with both morning and afternoon designations.

The above records must be available for inspection by a representative of the Department of Labor and Industry or must be submitted to the Commissioner on request. The employer is subject to a penalty of up to \$1,000.00 issued by the Commissioner and may also be subject to a civil action for each failure to submit or deliver records or failure to post a summary of the Minnesota Act or failure to maintain records.

ADDITIONAL MINNESOTA REQUIREMENTS

Statement of Wages

At the end of each pay period, the employer must give each employee a written earnings statement covering that pay period. The earnings statement may be in any form determined by the employer, but must include all of the following:

- The employee's name.
- Hourly rate of pay (if applicable; not applicable if the employee is paid on a basis other than hourly).
- Total number of hours worked by the employee, unless the employee is exempt from Minn. Stat. § 177 (e.g., *bona fide* executive, administrative, professional or outside sales person).
- Gross pay earned by the employee during the pay period.
- List of deductions made from the employee's pay.
- Net amount of pay after all deductions are made.
- The date on which the pay period ends.
- The legal name of the employer and the operating names of the employer if different from the legal name.

Payment of Wages

General Rule. All employers are required by statute to pay all wages due an employee at least once every 31 days on a regular pay day designated in advance by the employer. Wages earned during the first half of the first 31-day period become due on the first regular payday following the first day of work.

Discharged Employees. When an employer discharges an employee, wages and commissions earned and unpaid at the time of discharge become immediately due and payable at the demand of the employee. If the employee is not paid within 24 hours following the demand, the employer may be liable to the employee for an additional sum equal to the employee's average daily earnings, for every day up to 15 days that payment is not made.

If a discharged employee collected, disbursed or handled money or company property, the employer has 10 calendar days after termination of employment to audit the employee's accounts and check in property before making final payment.

Commission salespersons must be paid within three working days if they are discharged or if they resign with at least five days written notice. If no notice was given before a resignation, the salesperson must be paid within six working days. If the discharged, or resigned salesperson collected, disbursed, or handled money or property, the employer has 10 working days to audit the accounts before the sales person can demand commissions earned through the last day of work.

Employees who work on any project that requires them to live away from home must be paid at intervals of not more than 15 days at the place of employment or in close proximity to the place of employment. When work that requires employees to live away from home ends, either by the completion of work or by the discharge or quitting of the employee, the employee's wages must be paid within 24 hours. If wages are not paid within 24 hours, the employer is liable for the employee's reasonable expenses of remaining away from home. If wages are not paid within two business days, an employer is liable for two times the employee's average daily wage from termination until payment is made, in full, regardless of how long it takes.

In 2006, the Minnesota Court of Appeals ruled that "wages" includes compensation for accumulated but unused vacation time for a discharged employee.

Employees Who Quit or Resign. An employee who quits or resigns and who did not have a contract for a definite period of service must be paid in full not later than the next regularly-scheduled payday after his or her last day of work. If that payday is fewer than five days after employee's last day of employment, the wages may be paid at the next regularly-scheduled payday, as long as that payday is no more than twenty days after the last day of employment. Wages not paid during this time period are immediately due upon the employee's request, and if not paid upon that demand the employer is liable to the employee for an amount equal to the employee's average daily wage for each day the wages are unpaid, up to fifteen days.

An exception is made for migrant workers; they must be paid within five days after they quit or resign. Also, an employee subject to a collective bargaining agreement will be subject to terms of payment contained in that agreement.

Penalties Relating to Payment of Wages

Minn. Stat. § 386 provides penalties for violations of many Minn. Stat. relating to the payment of wages by employers to employees. First, the penalties for an employer's failure to submit or deliver the employment records required by Minn. Stat. § section 177.27, subdivision 2, is \$1,000. Second, the Commissioner of the Department of Labor and Industry has the power to issue compliance orders in connection with additional Minn. Stat. that speak to the payment of wages.

In terms of the Commissioner's enforcement powers, the Commissioner may issue cease and desist orders with respect to violations of any of the statutes listed in Minn. Stat. § 177.27, subdivision 4, or of the rules adopted under Minn. Stat. § 177.28. Also, with respect to the same violations, the Commissioner may take whatever steps he or she determines necessary to effectuate the purposes of the rule or statute violated, and also order the employer to pay the employee back pay, gratuities, compensatory damages (net of any amounts already paid to the employee), and liquidated damages. Repeated or willful violations are subject to a civil penalty of up to \$1,000 per violation per employee; Minn. Stat. § 386 contains factors to be used by the Commissioner in determining the amount of that penalty. Finally, in some instances, an employer can be required to pay the litigation and hearing costs incurred by the Attorney General's office and the Department of Labor and Industry.

Minn. Stat. § 386 also allows employees to sue directly in district court (without first exhausting administrative remedies) for violations of many of the Minn. Stat. relating to the payment of wages. Employers found to have violated such statutes are also liable for an employee's reasonable costs, disbursements, witness fees, and attorneys' fees.

Furloughs and other reductions in pay and/or hours worked. In response to current economic challenges, employers may need to require employees to take furloughs and other reductions in pay and/or hours worked.

Because of the variety of legal issues connected with furloughs that run the gamut from wage and hour issues, possible unlawful discrimination, WARN Act notifications, continuing obligations and labor relations challenges to benefit issues, it is recommended that this issue be discussed with private legal counsel. The U.S. Dept. of Labor has a fact sheet and opinion letters that are also helpful.

Deductions from Wages

In General. By Minnesota statute, employers may only deduct certain items from an employee's wages. The employee must authorize the deduction in writing. Deductions authorized by law include deductions for union dues, life insurance premiums, hospitalization and surgical insurance, group accident and health insurance, group term life insurance, group annuities, contributions to credit unions or a community chest fund, contributions to a local arts council, local science council or Minnesota benefit association, contributions to a federally or state registered political action committee, and contributions to an employee stock purchase plan or savings plan. Minn. Stat. § 181.06, subd. 2.

Uniforms and Equipment. Minnesota law limits the deductions directly or indirectly that may be made for uniforms, equipment and consumable supplies used on the job, and travel expenses. No deductions may be made for these items if the deduction would reduce the employee's wages below minimum wage. Deductions for uniforms or equipment may not exceed \$50, and when employment is terminated, the employer must reimburse the full amount deducted. The employer may require the employee to surrender items for which reimbursement is made, but may not hold the employee's last check for failure to return the items. Minn. Stat. § 177.24, subd. 4 and 5; 181.79.

Lost or Damaged Property. An employer may not deduct from wages any amount for lost, stolen or damaged property, or recover any claimed amount owed by the employee to the employer, unless the employee voluntarily authorizes the employer in writing to make the deduction after the loss has occurred, or unless the employee is found liable by a court for the loss or indebtedness. There are specific statutory limits on the amount which may be deducted in each pay period.

Child Support or Spousal Maintenance and Medical Support Obligations. The Minnesota Department of Human Services is directed to have employers participate in a centralized work reporting system for child support enforcement purposes. Employers are required to report certain information on newly-hired employees, and on independent contractors, within fifteen days of hiring or engaging that person.

Employers also must ask all new employees whether they have court-ordered medical support or dependent health or dental insurance obligations that must be withheld from income, and the terms of any court order. If medical support must be withheld, the employer must do the appropriate withholding. If the employee is required to obtain dependent insurance the employer must tell the employee about the application process and enroll the employee and dependents in the plan. An employer who willfully fails to comply is liable for the health or dental expenses incurred by dependents during the time they were eligible to be enrolled. The law also requires a court to order the parent with the better health care insurance plan to provide it for the children, if the plan is paid for by the employer or union.

Garnishment of Wages. An employer may be required to garnish and pay over money an employee owes to third persons. Certain statutory requirements must be met, and there is a limit on the amount of wages that may be garnished. These requirements and limitations are provided in the garnishment notice. An employer is prohibited by law from retaliating against an employee due to garnishment. An employer may charge the employee \$3 for each written response the employer must provide for purposes of administering the garnishment of wages.

Access to Personnel Records (Other Than Employee Assistance Records)

Employers who employ one or more employees must allow those workers to review their personnel records and to obtain a copy under certain circumstances.

A worker must request the right to review his or her personnel file in writing, and can only do so once in a six-month period. An employee who separates from service may review the file once a year for as long as the personnel record is maintained. After the employee makes the request, the employer must comply within seven working days if the personnel record is in Minnesota, and within 14 days if the record is outside the state.

The file must be made available for review during the employer's normal hours of operation, but need not be made available during the employee's working hours. For separated employees, this requirement is met if the employee is given a copy of the file. The employer may require that the review be done in the presence of the employer or the employer's designee. After the review and upon the employee's written request, the employer must provide a copy of the record to the employee. The employer may not charge a fee for the copy. A request to review the record may be denied if the employer determines it is not made in good faith.

The law specifies a procedure for removal or revision of information that is disputed by the employee. If the employer and employee cannot agree on removal of disputed information, the employee may submit a written statement of up to five pages specifically identifying the disputed information and explaining the employee's position. The employee's statement must be included along with the disputed information for as long as the information is maintained in the employee's personnel record. A copy of the employee's statement must be provided to any person who receives a copy of the disputed information.

Communication of information obtained through a review of the employee's personnel record cannot be the basis of a defamation action, unless the employer refuses to follow the dispute resolution procedure. The law specifies conditions under which a defamation action may be maintained.

The law specifically prohibits retaliation against an employee for asserting his or her rights under the law. An employee may bring a civil action against an employer for violation of the law. Generally, the employee may recover actual damages and costs. If the employer is found to have unlawfully retaliated against the employee, the employee also may recover back pay, reinstatement or other equitable relief, and reasonable attorney's fees. The Minnesota Department of Labor and Industry may also assess a fine of up to \$5,000 for violations of the law.

Employer References

Minn. Stat. § 181.967, provides that a private employer (defined as an employer "that is not a public entity as defined in Minn. Stat. § 13.02") is protected from liability for disclosure of the kinds of information noted below unless the current or former employee demonstrates "by clear and convincing evidence" that the information was false and defamatory and that the employer knew or should have

known that the information was false and acted with malicious intent to injure the current or former employee.

The protection applies to disclosure of information "in response to a request for the information" about:

- 1) dates of employment;
- 2) compensation and wage history;
- 3) job description and duties;
- 4) training and education provided by the employer;
- 5) acts of violence, theft, harassment, or illegal conduct documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response, if any, contained in the employee's personnel record.

Any disclosure of the information in number five above must be in writing with a copy sent contemporaneously by regular mail to the employee's last known address.

The protection also applies to liability for written disclosure of the information below when the current or past employee has provided the employer with written authorization for disclosure:

- 1) written employee evaluations conducted before the employee's separation from the employer, and the employee's written response, if any, contained in the employee's personnel record;
- 2) written disciplinary warnings and actions in the five years before the date of the authorization, and the employee's written response, if any, contained in the employee's personnel record;
- 3) written reasons for separation from employment.

For information disclosed under this section the employer must contemporaneously provide the employee or former employee with a copy of the information disclosed and to whom it was disclosed by mailing this information to the employee or former employee.

The prospective employer or employment agency shall not disclose written information received under this section without the written authorization of the employee.

The protections of the law do not apply to an employee's action involving an alleged violation of Minn. Stat. § 363 (the Minnesota Human Rights Act) nor does the law diminish or impair the rights of a person under a collective bargaining agreement.

Access to Personnel Records Relating to Employee Assistance Programs

When employees avail themselves of an employer's employee assistance program, Minn. Stat. § 181.980 governs what must be done with the resulting records. An employee assistance provider must give, upon written request of a person who has received such services (or the parent or guardian of a minor person who has received such services), that person an opportunity to review and obtain copies of that person's employee assistance records. No fee may be charged for copies of records, and the employee assistance provider must comply with such a request no later than seven working days after receipt of such request, if the records are located in Minnesota, or fourteen working days if the records are elsewhere. Also, that statute mandates that such records "must be maintained separate from personnel records and must not become part of an employee's personnel file." The statute also prohibits disclosure of such records, or the fact of the participation in such a program, to a third person, including the employer or its representative, absent the prior written authorization of the person receiving the services, or his or her legal representative. There are some exceptions to that prohibition. The statute also provides that its rights and obligations "are in addition to rights or obligations created under a contract or other law governing access to records." Finally, the statute provides that "[i]n addition to other remedies provided by law, the recipient of employee assistance services may bring a civil action to compel compliance with this section and to recover damages, plus costs and reasonable attorney fees."

Indemnification of Employees

Minnesota employers are required by state statute to indemnify their employees for civil damages, fines and penalties arising out of their employment. To receive indemnification, employees must have acted within the scope of their duties and not have engaged in intentional misconduct, willful neglect of duty, or bad faith. Exceptions apply when another law or private agreement provides for indemnification.