

CHAPTER 5200 DEPARTMENT OF LABOR AND INDUSTRY GENERAL WAGE AND LABOR RULES

- 5200.0010 PROOF OF MINOR'S AGE.
- 5200.0020 LEARNERS OR APPRENTICES.
- 5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.
- 5200.0040 EQUAL PAY FOR HANDICAPPED WORKERS.
- 5200.0050 RATES FOR PART-TIME EMPLOYEES.
- 5200.0060 MEAL ALLOWANCE.
- 5200.0070 LODGING ALLOWANCE.
- 5200.0080 TIP CREDITS.
- 5200.0090 DEDUCTIONS.
- 5200.0100 EMPLOYER RECORDS.
- 5200.0110 OTHER SPECIAL ITEMS.
- 5200.0120 HOURS WORKED.
- 5200.0130 REGULAR RATE OF PAY.
- 5200.0140 EXCLUSIONS FROM WAGES.
- 5200.0150 OVERTIME PAY.
- 5200.0160 EMPLOYER CREDITS.
- 5200.0170 WORKWEEK.
- 5200.0180 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL PERSONNEL.
- 5200.0190 EXECUTIVE TESTS.
- 5200.0200 ADMINISTRATIVE TESTS.
- 5200.0210 PROFESSIONAL TESTS.
- 5200.0220 OUTSIDE SALESPERSON.
- 5200.0230 GRATUITOUS SERVICE.
- 5200.0240 NONPROFIT ORGANIZATION.
- 5200.0250 MANDATORY PAYMENT OF WAGES.
- APPRENTICESHIP PROGRAMS AND AGREEMENTS
- 5200.0300 PROCEDURE FOR ESTABLISHING PROGRAMS.
- 5200.0310 MINIMUM TRAINING STANDARDS.
- 5200.0320 STANDARD APPRENTICESHIP AGREEMENT.
- 5200.0330 CANCELLATION OF APPRENTICESHIP AGREEMENT.
- 5200.0340 APPROVAL OF STANDARDS AND AGREEMENTS.
- 5200.0350 DUTIES OF SPONSORS.
- 5200.0360 TERMINATION, CANCELLATION, OR TRANSFER OF AGREEMENTS.
- 5200.0370 EQUAL OPPORTUNITY FOR APPRENTICES.
- 5200.0380 COMPLAINTS OF DISCRIMINATION.
- 5200.0390 DETERMINATION OF APPRENTICE WAGES.
- 5200.0400 APPRENTICESHIP COMMITTEE RULES.
- 5200.0410 CERTIFICATE OF COMPLETION.
- 5200.0420 MAINTENANCE OF RECORDS.
- FEE EMPLOYMENT AGENCIES
- DEFINITIONS.
- 5200.0500 LICENSE REQUIREMENT.
- 5200.0520 EXAMINATION BY DEPARTMENT.
- 5200.0530 LICENSE APPLICATION FORMS.
- 5200.0540 AGENCY NAME.
- 5200.0550 AGENCY LICENSE.
- 5200.0560 TEMPORARY HELP SERVICES.
- 5200.0570 LICENSE ENDORSEMENT.
- 5200.0580 CONTRACT AND ACCEPTANCE FORMS.
- 5200.0590 STANDARD CONTRACT LANGUAGE.
- 5200.0600 FEE INFORMATION ON CONTRACTS.
- 5200.0610 ACCEPTANCE FORM STANDARDS.
- 5200.0620 FEE DETERMINATION.
- 5200.0630 FEE DEDUCTED FROM SALARY.
- 5200.0640 LIABILITY FOR MISREPRESENTATION.
- 5200.0650 REFUNDS.
- 5200.0660 FEE PAID LIABILITY.
- 5200.0670 TWO REFERRALS TO SAME EMPLOYER.
- 5200.0680 COLLECTION OF FEE FROM APPLICANT.
- 5200.0690 FEE LIABILITY ON EMPLOYER REFUNDS.
- 5200.0700 JOB ORDER FORM.
- 5200.0710 EXPERTS AS REPRESENTATIVES OF EMPLOYERS.
- 5200.0720 COPY OF RULES AND LAW FOR MANAGER AND COUNSELORS.
- 5200.0730 CONTRACT REQUIREMENT.
- 5200.0740 SEPARATE AGREEMENT WITH EMPLOYER.
- 5200.0750 DISPLAY OF LICENSES.
- 5200.0760 USE OF NAME OTHER THAN THAT ON LICENSE.
- 5200.0770 ADVERTISING.
- 5200.0780 PROHIBITED ACTIVITIES IN CONNECTION WITH AN AGENCY.
- 5200.0790 REQUIRED INFORMATION FOR THE DEPARTMENT.
- 5200.0800 ANNUAL RECORD OF SERVICE REPORT.
- 5200.0810 INITIATION OF CONTESTED CASE.
- 5200.0820 SERVICE OF DOCUMENT OF INITIATION AND NOTICE.
- 5200.0830 ANSWER TO INITIATING COMPLAINT.
- 5200.0840 NOTICE OF HEARING.
- 5200.0850 STATUTORY PARTY RIGHTS.
- CHILD LABOR STANDARDS
- 5200.0900 DEFINITION OF HOME CHORE.
- 5200.0910 PROHIBITED EMPLOYMENTS OF MINORS UNDER 18 YEARS OLD.
- 5200.0920 PROHIBITED EMPLOYMENTS OF MINORS UNDER 16 YEARS OLD.
- 5200.0930 EXCEPTIONS TO PROHIBITIONS RELATED TO EMPLOYMENT OF MINORS.
- 5200.0940 SPECIAL EXEMPTION PERMIT.
- 5200.0950 EXEMPTION PERMIT APPLICATION.
- 5200.0960 REVOCATION OF PERMIT.
- 5200.0970 MONTHLY REPORT ON EMPLOYMENT AND AGE CERTIFICATES.
- PREVAILING WAGE DETERMINATIONS
- 5200.1000 STATUTORY AUTHORITY AND PURPOSE.
- 5200.1010 DEFINITIONS.
- 5200.1020 PREVAILING WAGE DETERMINATIONS.
- 5200.1030 BASIS FOR WAGE DETERMINATIONS.
- 5200.1040 CLASSES OF LABOR.
- 5200.1050 WAGE SURVEY PROCEDURES.
- 5200.1060 DETERMINING THE LARGEST NUMBER OF WORKERS AND THE PREVAILING WAGE RATE.
- 5200.1070 APPRENTICES.
- 5200.1080 NOTICE OF WAGE DETERMINATIONS.
- 5200.1090 PETITION FOR RECONSIDERATION OF PREVAILING WAGE RATES.
- 5200.1100 MASTER JOB CLASSIFICATIONS.
- 5200.1110 POSTING OF WAGE RATES.
- 5200.1120 EFFECTIVE DATE OF WAGE RATE DETERMINATIONS.

MINNESOTA RULES 1983

4187

GENERAL WAGE AND LABOR RULES 5200.0030

5200.0010 PROOF OF MINOR'S AGE.

Subpart 1. **Requirement.** Employers claiming an employee is under 18 must have his or her birthdate substantiated by a birth certificate or an age certificate issued by the Department of Labor and Industry through the local superintendent of schools, or a photocopy of the employee's driver's license, or a Minnesota identification card issued by the Department of Transportation included in the payroll records kept for such employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage.

Subp. 2. **Statutory requirement and criminal liability.** The Child Labor Standards Act, Minnesota Statutes, section 181A.06, subdivision 1 provides as follows:

"Every employer shall require proof of the age of any minor employee or prospective employee by requiring the minor to submit an age certificate, a copy of his birth certificate, or a copy of his driver's license. Upon the request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district in which the applicant resides. Superintendents, principals, or headmasters of independent or parochial schools shall issue age certificates to minors who attend such schools."

Minnesota Statutes, section 181A.12, subdivision 1: "Any employer who hinders or delays the department or its authorized representative in the performance of its duties under sections 181A.01 to 181A.12, or refuses to admit the commissioner or his authorized representative to any place of employment, or refuses to make certificates or lists available as required by sections 181A.01 to 181A.12, or otherwise violates any provisions of sections 181A.01 to 181A.12, or any regulations issued pursuant thereto shall, upon conviction therefor, be guilty of a gross misdemeanor."

Minnesota Statutes, section 181A.12, subdivision 2: "Any other person violating any provision of sections 181A.01 to 181A.12 or any regulations issued pursuant thereto or assisting another in such violation is guilty of a misdemeanor."

Statutory Authority: *MS s 177.28*

5200.0020 LEARNERS OR APPRENTICES.

A learner is a student enrolled in a state-approved high school vocational on-the-job training program in which supervision is provided by the school for the on-the-job experiences, a training plan is established for each individual student learner, and school credit is given for job experiences. For the first 300 hours of employment, the learner shall be paid at a rate of not less than the wage rate for minors.

Statutory Authority: *MS s 177.28*

5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50 percent of minimum wage.

No profit-making organization may employ handicapped workers at a subminimum wage for more than ten percent of its total work force unless granted a special permit by the commissioner of labor and industry to exceed the ten percent limitation.

5200.0030 GENERAL WAGE AND LABOR RULES

4188

Sheltered workshops are excluded from the above percentage limitations of numbers of employees and percentage of minimum wage, but not from the permit requirement.

Statutory Authority: *MS s 177.28*

5200.0040 EQUAL PAY FOR HANDICAPPED WORKERS.

Where a handicapped person is now performing or is being considered for employment where he or she will perform work which is equal to work performed by a nonhandicapped person, such handicapped person shall be paid the same wage as a nonhandicapped person with similar experiences.

Statutory Authority: *MS s 177.28*

5200.0050 RATES FOR PART-TIME EMPLOYEES.

Part-time employees may not be paid wages below the minimum rates established for adults and minors, except as provided for under Minnesota Statutes, section 177.23, subdivisions 11 and 12.

Statutory Authority: *MS s 177.28*

5200.0060 MEAL ALLOWANCE.

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee.

Meals must be consistent with the employee's work shift. Meal periods of less than 20 minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is \$1.15 per meal.

Statutory Authority: *MS s 177.28*

5200.0070 LODGING ALLOWANCE.

A lodging allowance of \$1.50 per day may be credited towards the minimum wage if furnished by the employer and accepted by the employee. Such lodging must be adequate, decent, and sanitary according to usual and customary standards. However, lodging, the nature of which is ordinarily and commonly considered to be a tenancy in the chief place of residence of the employee, shall be credited toward the minimum wage of that employee at the rate of the fair market value of the lodging provided. The tenancy shall be evidenced by a written lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Statutory Authority: *MS s 177.28*

5200.0080 TIP CREDITS.

Subpart 1. **Statutory provision.** Minnesota Statutes, section 177.28, subdivision 4 provides that a tip credit "may not be taken unless at the time the credit is taken the employer has received a signed statement for that pay period from the tipped employee stating that he did receive and retain during that pay period all gratuities received by him in an amount equal to or greater than the credit applied against the wages due by his employer. The statements shall be maintained by the employer as part of his business records."

MINNESOTA RULES 1983

4189

GENERAL WAGE AND LABOR RULES 5200.0100

Subp. 2. **Statements required at audit time.** The department in its investigations and audits shall require the employer to provide the signed tip statements at the time of its audit or no tip credit will be allowed.

Subp. 3. **Computation of tip credit.** Tip credit is based on the actual amount of tips received by the employee divided by the number of hours worked in a given pay period. A maximum tip credit may be allowed up to 20 percent of the applicable minimum wage. The employer's records must also indicate that the individual employee received at least \$35 per month in gratuities in order that any tip credit be allowed in that period.

Subp. 4. **Tip pooling.** Tip pooling may not be a condition of employment. Tip sharing or pooling shall be on an individual person-to-person basis. Another employee who benefits because the recipient shares the gratuity with him or her shall not have such remuneration considered in the calculation of his or her wages.

Subp. 5. **Gratuities.** A gratuity is presented indirectly when the sum of money is included in the statement of charges and no notice is made on the statement indicating that the amount is not a tip to be presented to the employee as a gratuity.

Subp. 6. **Service person.** A service person is one who in a given situation performs the main service for a customer and is to be considered the recipient of the gratuity for purposes of wage calculation.

Subp. 7. **Credit cards or charges.** Gratuities presented to a service person via inclusion on a charge or credit card shall be credited to that pay period for which they appear on the service person's tip statement.

Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the service person minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

Subp. 8. **Banquet gratuities.** Money presented by customers, guests, or patrons at a banquet as a gratuity to be divided among the service people shall be credited to that time period for which it appears on the service person's tip statement.

Subp. 9. **Compliance.** Tip credit may only be claimed or allowed consistent with the provisions of this part.

Statutory Authority: *MS s 177.28*

5200.0090 DEDUCTIONS.

Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or maintenance of uniforms, for spoilage, for breakage, for cash shortages or losses resulting from walkouts, bad checks, or robbery, or for fines for disciplinary purposes. These are considered matters separate from wages. The term "uniform" means wearing apparel and accessories required by the employer to be worn by the employee as a condition of employment.

Statutory Authority: *MS s 177.28*

5200.0100 EMPLOYER RECORDS.

By definition, "hours worked each day" includes beginning and ending time of work each day, which shall include a.m. and p.m. designations, and such designations shall be included in the employer's records.

Statutory Authority: *MS s 177.30*

5200.0110 GENERAL WAGE AND LABOR RULES

4190

5200.0110 OTHER SPECIAL ITEMS.

Other special items in a particular case which are not specifically outlined by law or rules shall be ruled on by the commissioner of labor and industry.

Statutory Authority: *MS s 177.28*

5200.0120 HOURS WORKED.

Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Statutory Authority: *MS s 177.28*

5200.0130 REGULAR RATE OF PAY.

In calculating overtime compensation due, the regular rate of pay is determined by dividing the employee's remuneration in any workweek by the total hours worked.

Statutory Authority: *MS s 177.28*

5200.0140 EXCLUSIONS FROM WAGES.

Payments which are not considered part of the employee's remuneration, for the purposes of calculating regular rate of pay, include:

- A. reimbursement for expenses incurred on the employer's behalf;
- B. premium payments for overtime work or work on Saturdays, Sundays, holidays, or scheduled days off, if the premium rate is at least 1-1/2 times the normal rate;
- C. bonuses given at the employer's discretion, as to both time and amount of payment;
- D. cash or other valuables in the nature of gifts on special occasions;
- E. payments for occasional periods when no work is performed including but not limited to vacation, holiday, or illness;
- F. payments made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, if amounts are determined without regard to production or efficiency; and
- G. contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees.

Statutory Authority: *MS s 177.28*

5200.0150 OVERTIME PAY.

Overtime pay shall be paid no later than the payday immediately following the regular payday for the pay period in which it was earned.

Statutory Authority: *MS s 177.28*

5200.0160 EMPLOYER CREDITS.

Credit granted the employer for such items as meals must be included in the employee's remuneration total.

Statutory Authority: *MS s 177.28*

5200.0170 WORKWEEK.

Subpart 1. Definition. The period of time used for determining compliance with the minimum wage rate, overtime compensation, and designation as a part-time employee is the workweek, which is defined as a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods. This is true whether the employee is paid on an hourly, piecework, commission, or any other basis. Once the workweek is established, it remains fixed, although

MINNESOTA RULES 1983

4191

GENERAL WAGE AND LABOR RULES 5200.0180

it may be changed if the change is intended as permanent rather than as an evasion of the overtime provisions. If no workweek is designated, it shall follow the calendar week.

The commissioner of labor and industry may upon receiving application made by an employer establish a different period of time to be used as workweek for purposes of this part.

Subp. 2. Excessive workweeks. No employer shall be deemed to have violated Minnesota Statutes, section 177.25, subdivision 1 by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if:

A. the regular rate of pay of such employee is in excess of 1-1/2 times the minimum hourly rate applicable to him or her under Minnesota Statutes, section 177.24; and

B. more than half the compensation for a representative period (not less than one month) represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

Statutory Authority: *MS s 177.28*

5200.0180 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL PERSONNEL.

Subpart 1. Duties determine status. The primary duties of the employee are determinative of his or her status under this exemption. Only where the employee's primary duties meet all the criteria under a particular test may the employer consider the employee to be exempt from the overtime wage provisions.

Subp. 2. Definition of manage. For purposes of parts 5200.0180 to 5200.0210, the term "manage" means to control and direct the business operations of a given enterprise, department, or branch establishment. Duties involved in managing must involve the making of decisions and the issuance of directions to other employees which involve skill and judgment. The term includes those employees that act primarily and principally in a directive capacity as opposed to those who primarily do the actual work.

Subp. 3. Discretionary powers. The thrust of this criterion is to distinguish between those employees empowered to independently commit their employers on matters of importance and those employees who merely make day-to-day decisions which, although necessary to the daily operations of the employer's business, are routine, or follow prescribed procedures, or involve a determination of whether specific standards are met, or are lacking in substantial importance to the employer's business as a whole. One test which should be utilized in determining whether an employee exercises discretionary powers is to ask whether the decisions being made involve a discretion as to company policy or procedure or commit the employer on matters of substantial importance. Mere recommendations with respect to policies and procedures are not sufficient unless it can be shown that the employer consistently accepted and followed those recommendations.

Subp. 4. Sole charge. Only one employee per enterprise, department, or branch establishment may be considered to be in sole charge regardless of the number of work shifts per day.

Subp. 5. Determination of exempt and nonexempt work. In determining exempt and nonexempt work under parts 5200.0180 to 5200.0210, work directly related to executive or administrative work may be included if the executive work which it relates to is actually performed by the employee. It is not

5200.0180 GENERAL WAGE AND LABOR RULES

4192

sufficient to claim certain work is exempt where the executive or administrative function it might be directly related to is not performed by the employee.

Statutory Authority: *MS s 177.28*

5200.0190 EXECUTIVE TESTS.

Subpart 1. **Executive test I.** Executive test I:

- A. receives at least \$250 per week in salary;
- B. manages the enterprise by which he is employed or a recognized department or subdivision thereof; and
- C. customarily directs the work of two or more other employees.

Subp. 2. **Executive test II.** Executive test II:

- A. receives at least \$155 per week in salary;
- B. manages and supervises a department of at least two other full-time people (a full-time employee is defined as one who works at least 35 hours in a workweek);
- C. has authority to hire or fire or suggest changes in employees' status;
- D. regularly exercises discretionary powers; and
- E. either:
 - (1) devotes less than 20 percent of time worked, or 40 percent in retail or service establishments, to nonexempt work;
 - (2) owns 20 percent or more of the business; or
 - (3) has sole charge of an independent or branch establishment.

Statutory Authority: *MS s 177.28*

5200.0200 ADMINISTRATIVE TESTS.

Subpart 1. **Administrative test I.** Administrative test I:

- A. receives at least \$250 per week in salary or fee;
- B. either performs office or nonmanual work directly related to management policies or general business operations, or performs functions in the administration of a school system or subdivision thereof, in work directly relating to academic instruction; and
- C. regularly exercises discretion or independent judgment.

Subp. 2. **Administrative test II.** Administrative test II:

- A. receives at least \$155 per week in salary or fee;
- B. either performs office or nonmanual work directly related to business operations or management policies, or administers an educational system or subdivision thereof in work relating to academic instruction;
- C. regularly exercises discretion and independent judgment and makes important decisions;
- D. either:
 - (1) directly assists owner or bona fide executive or administrative employee;
 - (2) performs supervised work only along lines requiring special training or experience; or
 - (3) executes special assignments; and
- E. devotes less than 20 percent of time worked, or 40 percent in retail or service establishments, to nonexempt work.

Statutory Authority: *MS s 177.28*

MINNESOTA RULES 1983

4193

GENERAL WAGE AND LABOR RULES 5200.0230

5200.0210 PROFESSIONAL TESTS.

Subpart 1. **Professional test I.** Professional test I:

- A. receives at least \$250 per week in salary or fee;
- B. either:
 - (1) performs work requiring advanced knowledge in a field of science or learning;
 - (2) performs work as a teacher in the activity of imparting knowledge; or
 - (3) performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor; and
- C. consistently exercises discretion and judgment.

Subp. 2. **Professional test II.** Professional test II:

- A. receives at least \$170 per week in salary or fee;
- B. either:
 - (1) performs work requiring advanced knowledge in a field of learning customarily acquired by prolonged specialized intellectual study, not a general academic education, an apprenticeship, or training in routine mental or physical processes;
 - (2) performs original work dependent on his own creativeness in a recognized field of artistic endeavor; or
 - (3) is a certified teacher working as such or recognized as such in the school system where he works;
- C. consistently exercises judgment and discretion;
- D. performs predominantly intellectual work so varied that the output cannot be standardized by time necessary for accomplishment; and
- E. devotes less than 20 percent of his hours worked to activities not essential to his professional work.

Statutory Authority: *MS s 177.28*

5200.0220 OUTSIDE SALESPERSON.

"Salesperson" is defined as one who makes sales of, or obtains orders or contracts for, materials, services, or the use of facilities for which payment will be made. Incidental deliveries, collections, and other nonsales or nonsolicitation work that is directly related to the primary sales duties shall be considered the work of a salesperson. An outside salesperson is hired for the express purpose of performing such duties away from the employer's place(s) of business and conducts no more than 20 percent of sales on those premises. The hours of nonoutside sales work may not exceed 20 percent of the hours worked by employees who are not outside salespersons.

Statutory Authority: *MS s 177.28*

5200.0230 GRATUITOUS SERVICE.

Gratuitous service is voluntarily donated work performed by a person who receives for it no monetary compensation or other valuable consideration. The individual may be reimbursed for out-of-pocket expenses needed to perform the services, but only if these expenses are itemized. The acceptance of an expense allowance (that is, a gross sum provided him with no itemized list of expenses) makes the individual nonexempt. See Minnesota Statutes, section 177.23, subdivision 7, clause (5).

Statutory Authority: *MS s 177.28*

MINNESOTA RULES 1983

5200.0240 GENERAL WAGE AND LABOR RULES

4194

5200.0240 NONPROFIT ORGANIZATION.

"Nonprofit organization" is defined as a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earning of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. See Minnesota Statutes, section 177.23, subdivision 7, clause (5).

Statutory Authority: *MS s 177.28*

5200.0250 MANDATORY PAYMENT OF WAGES.

The payment of wages due must be made at least once every 30 days.

Statutory Authority: *MS s 177.28*

APPRENTICESHIP PROGRAMS AND AGREEMENTS

5200.0300 PROCEDURE FOR ESTABLISHING PROGRAMS.

The procedure for establishing an occupation as apprenticeable shall be as follows. The proposed occupation shall be presented to the director of apprenticeship in duplicate and should include a detailed job process for the occupation showing the total amount of time of training, amount of time to be spent in each individual category of training, percentage of journeyman's wage rate to be paid the apprentice, graduated schedule of wage increases, and the journeyman's wage rate for the proposed occupation.

Statutory Authority: *MS s 178.041*

5200.0310 MINIMUM TRAINING STANDARDS.

The minimum training standards to be met shall be the established joint apprenticeship committee standards for the particular trade in a given occupational area. In the event no joint apprenticeship committee standards have been established, the approved Minnesota minimum standards shall be used.

The minimum inclusions for coverage in apprenticeship standards shall be the approved Minnesota minimum standards.

Statutory Authority: *MS s 178.041*

5200.0320 STANDARD APPRENTICESHIP AGREEMENT.

MINNESOTA MINIMUM STANDARDS OF APPRENTICESHIP for

(Name of Sponsor)

(Address of Sponsor)
for occupation(s) of

INDEX

1. Definitions
2. Policy
3. Qualifications of apprentices
4. Apprenticeship agreement
5. Term of apprenticeship

MINNESOTA RULES 1983

4195

GENERAL WAGE AND LABOR RULES 5200.0320

6. Credit for previous experience
7. Probation period
8. Responsibilities of the apprentice
9. Supervision of apprentices
10. Schedules of work process and wage schedule
11. Related instruction
12. Hours of work
13. Certificate of completion of apprenticeship
14. Modifications
15. Compliance with the Minnesota Plan for equal employment opportunity in apprenticeship

1. DEFINITIONS

A. The "Employer" shall mean the apprenticeship sponsor as named above. (Employer, apprenticeship committee, association of employers, or organization of employees.)

B. "Approval Agency" or "Registration Agency" shall mean the Minnesota Apprenticeship Council.

C. "Apprenticeship Agreement" shall mean a written agreement (VAL Form #1) between the employer and the apprentice and (if the apprentice is a minor) his or her parent or guardian, and approved by the approval agency. (VAL Form #1 may be obtained from the Minnesota Division of Apprenticeship, Department of Labor and Industry, St. Paul, Minnesota.)

D. "Apprentice" shall mean a person at least 16 years of age who has entered into an apprenticeship agreement with an employer, which apprenticeship agreement provides for not less than 4,000 hours of reasonably continuous employment for such persons and for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

E. "Supervisor of Apprentices" shall mean the individual designated by the employer to perform the duties described in section 9 herein.

F. "Standards" shall mean these entire standards of apprenticeship including these definitions.

2. POLICY

It shall be the policy of the employer:

A. That all apprentices employed in a trade covered herein shall be governed by the terms of these standards and by the provisions of the Minnesota Voluntary Apprenticeship law.

B. That the recruitment, selection, employment, and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex. The employer will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under the Code of Federal Regulations, title 29, part 30, and under the Minnesota Plan for Equal Employment Opportunity in Apprenticeship.

3. QUALIFICATIONS OF APPRENTICES

Applicants for apprenticeship must be at least 16 years of age and must be physically qualified to perform the manual work of the trade. Veterans may be given special consideration if otherwise qualified.

4. APPRENTICESHIP AGREEMENT

The apprentice (and if a minor, his or her parent or guardian) shall sign the properly filled out apprenticeship agreement, which agreement shall also be signed by the employer and submitted for approval to the approval agency. The apprenticeship agreement shall contain a clause making these standards a part of said agreement.

MINNESOTA RULES 1983

5200.0320 GENERAL WAGE AND LABOR RULES

4196

The approval agency shall furnish approved copies of said agreement to:

1. the apprentice;
2. the employer;
3. other interested organizations or agencies as required.

5. TERM OF APPRENTICESHIP

The term of apprenticeship shall be designated in hours, months, or years for the individual trades included in these standards. For each trade to be so included, a job process schedule including the total training term applicable thereto shall be attached to these standards as Appendix.

6. CREDIT FOR PREVIOUS EXPERIENCE

Credit may be awarded for previous experience and/or training that is applicable to training program requirements. If credit is awarded, the apprentice shall be advanced in the graduated wage schedule accordingly.

7. PROBATIONARY PERIOD

An apprentice under these standards shall be subject to a probationary period of not more than 500 hours of employment and instruction extending over not more than four months. During such period the apprenticeship agreement shall be terminated by the Director of Apprenticeship at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the director by mutual agreement of all parties thereto, or cancelled by the director for good and sufficient reason.

8. RESPONSIBILITIES OF THE APPRENTICE

Each apprentice employed under these standards agrees to be punctual and regular in attendance, and to endeavor to the best of his or her ability to perfect the required skills in the chosen craft.

9. SUPERVISION OF APPRENTICES

The employer shall designate a qualified individual as supervisor of apprentices who shall:

- a. Maintain an adequate record of progress in training each apprentice.
- b. Be responsible for assuring that the requirements of the applicable training program are met during the prescribed training term.
- c. Perform such other duties as may be assigned by the employer relative to the development and operation of an effective program of apprenticeship.

10. SCHEDULE OF WORK PROCESSES AND WAGE SCHEDULE

A. The apprentice shall be given work experience and instruction according to the applicable job processes schedule (Appendix A attached).

B. Training experience need not be in the exact order as listed in the schedule. Eighty percent adherence to the schedule shall be considered adequate provided the full training term is accounted for.

C. The job process schedule shall provide for a minimum of 50 hours per year of training in safe work practices.

D. For each job title there should be a minimum graduated wage schedule as follows: (May be in percentages of journeyman wage or a rate per hour)

____ months-hours ____ % ____ c	____ months-hours ____ % ____ c
____ months-hours ____ % ____ c	____ months-hours ____ % ____ c
____ months-hours ____ % ____ c	____ months-hours ____ % ____ c
____ months-hours ____ % ____ c	____ months-hours ____ % ____ c
____ months hours ____ % ____ c	____ months-hours ____ % ____ c

Journeyman wage rate on _____ was _____.

11. RELATED INSTRUCTION

During each year of the apprenticeship term, a minimum of 144 hours of related instruction is required. Failure on the part of the apprentice to fulfill his or her related instruction requirement shall be sufficient cause for cancellation of the apprenticeship agreement.

MINNESOTA RULES 1983

4197

GENERAL WAGE AND LABOR RULES 5200.0350

12. HOURS OF WORK

Working hours for apprentices shall be the same as for journeymen in the trade. Time spent in related instruction shall not be considered as hours of work as required by the job process schedule.

13. CERTIFICATE OF COMPLETION OF APPRENTICESHIP

Upon successful completion of the apprenticeship term and related training requirements, and upon appropriate recommendation by the employer, the approval agency shall issue to the apprentice a Certificate of Completion of Apprenticeship.

14. MODIFICATIONS

A. Details of this program may be modified from time to time subject to approval by the approval agency.

B. Any such modification shall not, at the time of modification, affect apprenticeship agreements then in effect without the consent of the parties to the agreement.

C. The employer may withdraw from the program by submitting a written request to the approval agency.

D. The approval agency may cancel the standards of apprenticeship for good and sufficient reason.

15. COMPLIANCE WITH THE MINNESOTA PLAN FOR EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP

A. The provisions of the subject plan, as may be amended shall apply to the employer or sponsor named in these standards of apprenticeship.

B. Additional material and information as may be required (Sec. III of the subject plan) shall be attached to these Standards of Apprenticeship as Appendix B, and shall be considered a part thereof subject to approval by the approval agency.

Signature of Sponsor

_____	_____
Title	Date
Approved by the Minnesota Apprenticeship Council	
_____	_____
Secretary	Date

Statutory Authority: *MS s 178.041*

5200.0330 CANCELLATION OF APPRENTICESHIP AGREEMENT.

The apprenticeship agreement may be canceled by the director of apprenticeship for failure to comply with related training requirements.

Statutory Authority: *MS s 178.041*

5200.0340 APPROVAL OF STANDARDS AND AGREEMENTS.

All standards and agreements shall be submitted to the division of apprenticeship for approval.

Statutory Authority: *MS s 178.041*

5200.0350 DUTIES OF SPONSORS.

It shall be the sponsor's obligation to:

A. Prepare standards for submission to the Division of Apprenticeship.

B. Prepare apprenticeship agreements. All sponsors shall use the state of Minnesota Approved Apprenticeship Agreement form.

C. All programs operating under a committee shall in its standards provide for a tie-breaking procedure so it will be able to reach a majority decision.

5200.0350 GENERAL WAGE AND LABOR RULES

4198

Submit two copies of a safety program providing for a minimum of 50 hours per year for safety training of apprentices. Any request for variance from this part must be presented in writing and approved by the Minnesota Apprenticeship Advisory Council.

Statutory Authority: *MS s 178.041*

5200.0360 TERMINATION, CANCELLATION, OR TRANSFER OF AGREEMENTS.

Subpart 1. Written notice. The division of apprenticeship shall be notified in writing by the sponsor of all terminations, cancellations, or transfer of apprenticeship agreements.

Subp. 2. Director's approval required. All terminations, cancellations, and transfers shall be approved by the director of apprenticeship. The director shall notify the sponsor and all other concerned parties in writing.

Subp. 3. Appeals. Any decision to terminate, cancel, or transfer an agreement by the director may be appealed under the Voluntary Apprenticeship Law, Minnesota Statutes, section 178.09.

Statutory Authority: *MS s 178.041*

5200.0370 EQUAL OPPORTUNITY FOR APPRENTICES.

Requirements of program sponsors under the Minnesota Plan for Equal Employment Opportunity in Apprenticeship and Code of Federal Regulations, title 29, part 30 are as follows:

A. Programs with fewer than five apprentices shall submit the following: two copies of proposed standards, and include in its standards the approved equal opportunity pledge.

B. Programs with five or more apprentices shall submit the following: two copies of proposed standards, include in its standards the approved equal opportunity pledge, a written affirmative action plan, and adopt one of the following four approved selection procedures under the Minnesota Plan for Equal Employment in Apprenticeship:

- (1) selection on basis of rank from pool of eligible applicants;
- (2) random selection from pool of eligible applicants;
- (3) selection from pool of current employees; or
- (4) alternative selection methods.

Statutory Authority: *MS s 178.041*

5200.0380 COMPLAINTS OF DISCRIMINATION.

Subpart 1. Right to complain. Any apprentice or applicant for apprenticeship who believes that he has been discriminated against on the basis of race, color, religion, national origin, or sex with regard to apprenticeship or that the equal opportunity standards in respect to his selection have not been followed in the operation of an apprenticeship program may file a complaint. The complaint shall be in writing and shall be signed by the complainant. It must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a description of the circumstances of the failure to apply the equal opportunity standards.

Subp. 2. Filing date. The complaint must be filed no later than 90 days from the date of the alleged discrimination.

Subp. 3. Referral of complaint. In the case of review boards designated by program sponsors to review such complaints, the referral of such complaint by the complainant to the agency must occur within 90 days or 30 days after the final decision of such review board, whichever is later.

MINNESOTA RULES 1983

4199

GENERAL WAGE AND LABOR RULES 5200.0420

Subp. 4. **Compliance reviews.** Where no review board exists, the apprenticeship agency may conduct such compliance reviews as found necessary in order to make a determination of facts relating to compliance with the equal employment opportunity plan.

Subp. 5. **Legal action against program.** The apprenticeship agency may, as a result of a compliance review or other reason, deregister the program or refer the matter to the United States attorney general with recommendations for the institution of a court action under Title 7 of the Civil Rights Act of 1964.

Statutory Authority: *MS s 178.041*

5200.0390 DETERMINATION OF APPRENTICE WAGES.

Subpart 1. **Procedure.** Determination of the graduated schedule of wages for an apprenticeship agreement shall be determined by the percentage rate used in the majority of individual apprenticeship agreements on file with the apprenticeship agency in any particular trade. The beginning rate shall not be less than the federal or state minimum rate, whichever is higher.

Subp. 2. **Journeyman wage rate.** The journeyman wage rate for apprenticeship agreements where no bargaining agreement exists shall be determined by counties for all trades and for the building construction trades, consideration shall be given to the current established so-called federal Davis-Bacon rate for that county, wage determinations that have been established under Laws of Minnesota 1973, chapter 724, and existing apprenticeship rates on file in the Minnesota Division of Apprenticeship at St. Paul, Minnesota.

Subp. 3. **Exceptions.** The only exceptions to this part shall be programs in penal institutions including stipends paid by the Department of Corrections.

Statutory Authority: *MS s 178.041*

5200.0400 APPRENTICESHIP COMMITTEE RULES.

Adoption of apprenticeship committee rules or changes shall be submitted to the director of apprenticeship in writing for approval. Legal authority for adoption of rules and for the director to approve rules will be determined by the attorney general's office.

Statutory Authority: *MS s 178.041*

5200.0410 CERTIFICATE OF COMPLETION.

Subpart 1. **Signature.** The completion certificate shall be the standard approved state certificate. This certificate shall be signed by the chairman of the State Apprenticeship Advisory Council, the commissioner of labor and industry, director of apprenticeship, a representative of the local joint apprenticeship committee, the employer, and representative from the union if a bargaining agreement exists. In the case of specialty trades where a state license is required, there shall be a signature from such licensing body.

Subp. 2. **Written request from sponsor.** Before any certificate of completion is issued, the Division of Apprenticeship must receive a request in writing from the sponsor.

Statutory Authority: *MS s 178.041*

5200.0420 MAINTENANCE OF RECORDS.

Subpart 1. **Advisory council's duty.** Minnesota Apprenticeship Advisory Council business and records shall be kept by the Division of Apprenticeship for the council.

Subp. 2. **Sponsor's duty.** Sponsors shall keep and maintain records of progress as required by the Division of Apprenticeship on record cards furnished by the sponsor or standard progress record cards furnished by the state, on an ongoing basis from the start to the completion of an apprenticeship. These

progress records shall be kept on the sponsor's premises and shall be accessible to all authorized personnel of the Minnesota Division of Apprenticeship. The definition of sponsor shall be the employer, association of employers, organization of employees, apprenticeship coordinator, or individual representing the joint apprenticeship committee. The Division of Apprenticeship shall be notified of the current address where records shall be kept and the person responsible for same.

Subp. 3. **Retention and availability of records.** Under the state of Minnesota Plan for Equal Employment Opportunity in Apprenticeship, it shall be the obligation of the sponsor to keep records as required by the Division of Apprenticeship pertaining to individual applicants for apprenticeship whether selected or rejected for five years and be made available upon request to authorized personnel of the Minnesota Division of Apprenticeship. These records pertaining to applicants shall be maintained in such a manner as to permit identification of minority participants.

Statutory Authority: *MS s 178.041*

FEE EMPLOYMENT AGENCIES

5200.0500 DEFINITIONS.

Subpart 1. **Scope.** For purposes of those provisions of law relating to fee employment agencies including Minnesota Statutes, section 184.01 et seq. the following terms shall have the meaning given to them.

Subp. 2. **Accept.** "Accept" means that the applicant has agreed with the employer on a specific position, wages, hours, working conditions, and a specific starting date, and has signed an acceptance form in which the agency has designated the terms of the acceptance. Within three weekdays of signing the acceptance form, excluding Saturday, Sunday, and legal holidays, the applicant may withdraw the acceptance by notifying the agency in writing, provided that the applicant did not actually start the job.

Subp. 3. **Fee status.** "Fee status" is the designation on the job order which describes the fee liability for placement. The designation shall be limited to one of the following terms:

A. "Fee paid" or "employer-paid fee" means that the employer has agreed to pay the entire fee directly to the agency.

B. "Fee reimbursed" means that the applicant shall pay the fee to the agency and shall subsequently be paid back by the employer. If reimbursement is to be only partial, it must be so specified.

C. "Split fee" means that the applicant and employer shall each pay a specified proportion of the fee to the agency.

D. "Applicant-paid fee" means that the entire fee shall be the responsibility of the applicant.

E. "Fee negotiable" means that the employer and the applicant will confer to settle the matter of fee responsibility prior to the acceptance of a job.

F. "Conditional fee paid" means that the employer has agreed to pay the fee but will require a separate fee liability agreement with the applicant.

Subp. 4. **Method of payment.** "Method of payment" means the specific procedure for paying the agency's placement fee after the placement is made. Method of payment must be stated in boldface type on the contract and be consistent with the disclosure requirements of the federal Truth-In-Lending Act, regulation Z.

Subp. 5. **Misconduct.** "Misconduct" is defined as a willful action involving assault and battery, an immoral act, the malicious destruction of property, the theft of money or property, or other conduct which markedly interferes with and adversely affects the individual's employment. The following also constitutes misconduct:

MINNESOTA RULES 1983

4201

GENERAL WAGE AND LABOR RULES 5200.0560

- A. excessive absenteeism;
- B. excessive tardiness;
- C. refusal to comply with orders of superiors;
- D. violation of known and acknowledged company rules;
- E. falsification of records;
- F. drinking on the job; and
- G. sleeping on the job.

Statutory Authority: *MS S 184.24*

5200.0510 LICENSE REQUIREMENT.

An employment agency license shall be obtained by any individual or entity whose agents physically operate in Minnesota as described in Minnesota Statutes, section 184.21, subdivision 2, irrespective of whether such operations are on a short-term or a transient basis.

Statutory Authority: *MS s 184.24*

5200.0520 EXAMINATION BY DEPARTMENT.

The department shall examine the recruitment, search, counseling, and/or placement activities of a business in order to determine whether an employment agent's license shall be obtained. After considering its findings and any recommendations of the Employment Agency Advisory Council, the department shall decide whether an employment agency license shall be required.

Statutory Authority: *MS s 184.24*

5200.0530 LICENSE APPLICATION FORMS.

Application for an employment agency license shall be on forms approved and supplied by the department. Bonds shall be on forms approved and supplied by the department.

Statutory Authority: *MS s 184.24*

5200.0540 AGENCY NAME.

Only one name may be used per agency license. This will not prohibit an agency from applying for more than one license per location. Each application must be accompanied by the appropriate bond and fees. A corporation may operate and do business only under its corporate name.

Statutory Authority: *MS s 184.24*

5200.0550 AGENCY LICENSE.

An agency shall not commence operations until a license has been formally issued by the department. Existing agencies applying for an additional license are not exempt from this provision.

Statutory Authority: *MS s 184.24*

5200.0560 TEMPORARY HELP SERVICES.

An organization that hires persons to work in temporary positions for employers who are clients of that organization is a temporary help service. If at any time a fee, other than liquidated damages due under an agreement between the service and the company, is charged by such organization for the permanent placement of individuals, then that organization is operating as a fee employment agency and shall be licensed as such.

Statutory Authority: *MS s 184.24*

5200.0570 LICENSE ENDORSEMENT.

An employment agent shall return to the department within five calendar days the license of any manager or counselor who leaves the employ of that agent. An employment agent requesting consent to change the name or address provided on the license shall return the license to the department for endorsement no less than ten calendar days prior to the requested date of change, along with a new bond or bond rider covering the change.

Statutory Authority: *MS s 184.24*

5200.0580 CONTRACT AND ACCEPTANCE FORMS.

Contract and acceptance forms shall contain uniform provisions and shall follow standards adopted by the department. All contracts shall be printed on letter size paper, 8-1/2 x 11, in eight-point type size or larger.

Statutory Authority: *MS s 184.24*

5200.0590 STANDARD CONTRACT LANGUAGE.

It shall be provided in bold face type:

A. At the top of all contracts "Legal Contract - Read and Understand."

B. On all contracts and acceptance forms that "All agreements and contracts are subject to the rules of the Department of Labor and Industry and the laws of the State of Minnesota."

C. Directly above the signature line on all contracts "I have read and understand the above contract. I have discussed this contract with a representative of the agency and have received a duplicate."

Statutory Authority: *MS s 184.24*

5200.0600 FEE INFORMATION ON CONTRACTS.

Applicant contracts shall contain all of the following statements unless language less restrictive to the applicant is approved by the department:

A. "I understand that a fee shall be due if I accept the position I am referred to or any position the employer offers me within 90 calendar days of the last contact between the agency and the company in reference to me. The fee shall be based on the position accepted. The agency shall inform me of all contacts made subsequent to my interviews with the employer."

B. "I understand that if an employer I am referred to sends me to another employer, whose job I accept, a fee is due."

C. "I understand that only one fee is payable for a position. If I am referred to the same position by two agencies, the fee shall be due the agent who first described the specific opening and gave the name of the employer, provided the interview with the employer is arranged by the agent within ten calendar days and is subsequently consummated."

D. "I understand that if the agency sends an employer my resume and I contact that employer on my own before being notified of the agency contact, I am not obligated to the agency for a fee unless I specifically request that the agency pursue this particular contact."

Where the applicant undertakes no fee liability of any nature, the contract, as an alternative to items A to D, may read: "I understand that I am not liable for any fee and that compensation to the agency is to be settled between the employer and the agency."

Statutory Authority: *MS s 184.24*

MINNESOTA RULES 1983

4203

GENERAL WAGE AND LABOR RULES 5200.0630

5200.0610 ACCEPTANCE FORM STANDARDS.

The acceptance form to be signed by the applicant shall contain the following information:

- A. title of job accepted;
- B. company name and address;
- C. salary;
- D. hours;
- E. job description;
- F. training to be received if a trainee position;
- G. starting date;
- H. acceptance date;
- I. name of counselor making placement;
- J. job order number referred on; and
- K. fee status, including description of:
 - (1) exact fee arrangements for fee reimbursed or split fee position;
 - (2) the amount of the fee;
 - (3) the percentage rate according to the fee schedule; and
 - (4) the carrying charges or interest, if applicable.

Statutory Authority: *MS s 184.24*

5200.0620 FEE DETERMINATION.

The following terms and methods shall be used in determining amount of fee due:

A. "One month's wages" or "salaries" or "earnings," when used to determine an agency's fees, means 4-1/3 weeks gross income minus overtime income, tips or gratuities, traveling expense, and other expense actually incurred in producing income.

B. A fee based on an annual salary is to be calculated upon the first month's (4-1/3 weeks) salary times 12. A fee based on a monthly salary is to be calculated only on the first month's salary.

C. For positions where income is based totally or partially on commissions or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first year's earnings. If employment is terminated for any reason prior to the end of the first year, the fee shall be recomputed at the rate applicable to the actual gross earnings as listed on the agent's fee schedule.

D. A fee shall be based on salary received for only the first 40 hours per week of employment. Executive, administrative, and professional positions as defined by rules issued pursuant to the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, parts 5200.0180 to 5200.0210 are excluded from this provision.

Statutory Authority: *MS s 184.24*

5200.0630 FEE DEDUCTED FROM SALARY.

No employment contract shall authorize the employer to deduct from the salary of the applicant any installments of the fee. An authorization for deductions from the applicant's salary shall be a separate and distinct agreement.

Statutory Authority: *MS s 184.24*

5200.0640 LIABILITY FOR MISREPRESENTATION.

An applicant shall not be liable for the agency fee if there is a misrepresentation of any material factor by the employer or by the agency. An applicant is not released from the liability for the fee if the job is retained. A material factor is one which constitutes substantially and mainly whether a job would have been accepted if that factor was lacking or was different than stated.

Statutory Authority: *MS s 184.24*

5200.0650 REFUNDS.

When a job which is presumed permanent becomes temporary, any refund due the applicant shall be remitted within five calendar days. The moneys shall not be retained by the agency in the anticipation of finding another job for the applicant.

Statutory Authority: *MS s 184.24*

5200.0660 FEE PAID LIABILITY.

No contract shall provide that an applicant who has accepted a fee paid job is obligated to terminate that position or accept the fee liability if the agency is unable to collect the fee from the employer.

Statutory Authority: *MS s 184.24*

5200.0670 TWO REFERRALS TO SAME EMPLOYER.

When an applicant is referred to an employer for a position to which he or she is not employed, and another agent refers the same applicant to the same employer for another position to which he or she is employed, the fee is payable to the second agent.

Statutory Authority: *MS s 184.24*

5200.0680 COLLECTION OF FEE FROM APPLICANT.

No fee or portion of a fee shall be collected from an applicant before the agreed-upon starting date.

Statutory Authority: *MS s 184.24*

5200.0690 FEE LIABILITY ON EMPLOYER REFUNDS.

An agency may not demand any money from an applicant on a fee paid or split fee position after 90 calendar days of employment because of refunds to the employer. Fees may be charged (because of refunds to the employer) to applicants who voluntarily leave or are terminated due to misconduct within 90 calendar days of employment on a fee paid or split fee position, provided the applicant contract fully explains the nature of the potential liability.

Statutory Authority: *MS s 184.24*

5200.0700 JOB ORDER FORM.

The following information must be contained on the job order form for each bona fide job order:

A. A sequential job order number. Each job order shall have its own number, which is to be included in any advertisement for that job. The word "job" and symbol "#" must precede the job order number in a written advertisement. Advertising via other media, including telephone answering devices shall indicate appropriate job order numbers. Any simple system involving letters and numbers may be used, providing it allows rapid retrieval of the job order in question.

B. Date order received. A "standing job order" shall be reaffirmed with the employer on a monthly basis.

C. Person who received order.

MINNESOTA RULES 1983

4205

GENERAL WAGE AND LABOR RULES 5200.0730

D. Method by which order received. This includes phone, mail, face-to-face, or other method.

E. Job title. The title used by the employer is considered the job title.

F. Job description, containing primary duties.

G. Company name.

H. Company address.

I. Company phone number.

J. Contact person(s), including name of person who gave the order and person to contact for interview.

K. Minimum starting salary.

L. Maximum starting salary.

M. Benefits offered.

N. Skills required.

O. Educational requirements.

P. Type and amount of experience required.

Q. Days and hours of work, including shifts.

R. Special posthire training, if any. This relates to any promises concerning training to be received by the applicant as a new employee. The nature of the various training areas must be specified.

S. Job availability date.

T. Fee status. One of the following terms shall be used to indicate the fee status:

(1) fee paid or employer-paid fee;

(2) fee reimbursed;

(3) split fee;

(4) applicant-paid fee;

(5) fee negotiable; or

(6) conditional fee paid.

Statutory Authority: *MS s 184.24*

5200.0710 EXPERTS AS REPRESENTATIVES OF EMPLOYERS.

When an employer requests an expert in an occupation to suggest suitable persons for employment and the expert requests an employment agent to refer applicants for such a position, the expert shall be deemed the representative of the employer and the request to the employment agent is considered a bona fide job order from the employer.

Statutory Authority: *MS s 184.24*

5200.0720 COPY OF RULES AND LAW FOR MANAGER AND COUNSELORS.

No employment agency owner shall fail to provide the manager and counselors with a copy of the employment agency law and the published rules currently in force.

Statutory Authority: *MS s 184.24*

5200.0730 CONTRACT REQUIREMENT.

A contract is required between the applicant and the agency whether the fee is paid by the employer or by the applicant. The applicant shall be given a duplicate of all agreements between the applicant and the agency, including the contract and acceptance form.

Statutory Authority: *MS s 184.24*

MINNESOTA RULES 1983

5200.0740 GENERAL WAGE AND LABOR RULES

4206

5200.0740 SEPARATE AGREEMENT WITH EMPLOYER.

An agent may negotiate a separate agreement with an employer for special services regarding recruitment, search, screening, referral, and placement, provided that the separate agreement does not violate the law or these rules.

Statutory Authority: *MS s 184.24*

5200.0750 DISPLAY OF LICENSES.

Each manager or counselor license shall be displayed in a conspicuous place on or near the individual's desk.

Statutory Authority: *MS s 184.24*

5200.0760 USE OF NAME OTHER THAN THAT ON LICENSE.

No employment agency, manager, or counselor shall use any name in the conduct of business or advertising other than that name which appears on the license.

Statutory Authority: *MS s 184.24*

5200.0770 ADVERTISING.

Every ad for a job opening which is placed with a newspaper or other advertising medium shall be checked by the employment agency with the employer when placed to ascertain that the job order is current and unchanged. Any knowledge received before the last cancellation time that the job is no longer available or is changed in nature shall be reflected in the ad.

Statutory Authority: *MS s 184.24*

5200.0780 PROHIBITED ACTIVITIES IN CONNECTION WITH AN AGENCY.

An employment agency shall not be conducted in connection with any other activity in which a charge is made to the applicant for personal service, except vocational training schools licensed or accredited by the State Department of Education. This part does not prevent the separate operation of a temporary help service at the same office or an office adjacent to a licensed employment agency, provided that any permanent placement activities are conducted by an employment agent licensed in accordance with the law and these rules.

Statutory Authority: *MS s 184.24*

5200.0790 REQUIRED INFORMATION FOR THE DEPARTMENT.

Information which is needed to administer the provisions of Minnesota Statutes, chapters 175 and 184 shall be furnished the department upon its request. A request for information shall state the need for such information. Each agency shall, within ten calendar days, supply the requested information or file a written statement explaining why it is not submitting the information.

Statutory Authority: *MS s 184.24*

5200.0800 ANNUAL RECORD OF SERVICE REPORT.

A record of service shall be maintained in a separate ledger in the office of each employment agency for a period of three years and shall contain the information required by Minnesota Statutes, section 184.38, subdivision 5. Each agency shall submit annually to the department with its agency license renewal application, a summary of the above record which contains the following information for the preceding year:

- A. total applicants placed;
- B. total annual salaries of placements; and
- C. total amount of fees collected.

The individual summary shall be used solely for compilation of statistical data for the employment industry as a whole.

MINNESOTA RULES 1983

4207

GENERAL WAGE AND LABOR RULES 5200.0850

The summary shall be submitted on a form provided by the department which shall make provision for its protection from usage inconsistent with its purpose.

Statutory Authority: *MS s 184.24*

5200.0810 INITIATION OF CONTESTED CASE.

Subpart 1. Right to complaint. Any person authorized by law to submit to the department a complaint that his or her individual rights or privileges are being denied or that duties owed are being defaulted upon may initiate a contested case by filing a complaint.

Subp. 2. Contents of complaint. A complaint shall contain:

- A. name and address of the complainant;
- B. name and address of those against whom the complaint is made;
- C. relief sought and grounds therefor; and
- D. signature of the complainant or the complainant's attorney.

Subp. 3. Order to commence contested case. The department may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

Statutory Authority: *MS s 184.24*

5200.0820 SERVICE OF DOCUMENT OF INITIATION AND NOTICE.

Within ten days following receipt of the complaint or adoption of the order initiating the contested case, the department shall serve all known parties a copy of the document of initiation and a notice stating:

- A. commencement of the contested case;
- B. time and place of the prehearing conference, if any;
- C. the purpose of the prehearing conference;
- D. name of the hearing officer;
- E. rights of the parties to counsel and to a formal hearing; and
- F. that failure to attend may prejudice the party's right in this and subsequent proceedings.

Statutory Authority: *MS s 184.24*

5200.0830 ANSWER TO INITIATING COMPLAINT.

Within 20 days after service of the complaint, excluding the day of service, an adverse party may interpose an answer to the initiating complaint or order. A copy of such answer shall be served on all parties to the contested case. The original together with an attached affidavit of service shall be filed with the department within five days after service is completed.

Statutory Authority: *MS s 184.24*

5200.0840 NOTICE OF HEARING.

Not less than 30 days prior to the hearing date, the department shall serve a notice of hearing on all parties to the case. Such notice shall contain: time and place of the hearing, the purpose and procedure for the hearing, the issues to be determined, and the name of the hearing officer who will preside.

Statutory Authority: *MS s 184.24*

5200.0850 STATUTORY PARTY RIGHTS.

Parties to a contested case shall have all rights under Minnesota Statutes, chapters 14 and 184.

Statutory Authority: *MS s 184.24*

CHILD LABOR STANDARDS

5200.0900 DEFINITION OF HOME CHORE.

"Home chore" is work usual to the home of the employer. Work performed in connection with or as part of the business, trade, or profession of the employer is not a home chore. Home chores are all those variable tasks normal to the running of a household and include but are not limited to mowing lawns, raking leaves, removing snow, light housekeeping, washing clothes or dishes, vacuuming, cleaning yards, and preparing food.

Statutory Authority: *MS s 181A.09*

5200.0910 PROHIBITED EMPLOYMENTS OF MINORS UNDER 18 YEARS OLD.

No minor under the age of 18 shall be employed:

A. In or about a place of employment where chemicals, compounds, dusts, fumes, vapors, gases, or radioactive materials, or other substances are present at excessive temperatures or in injurious, explosive, toxic, or flammable quantities. Minors employed in retail stores, service stations, and automobile service garages are not covered by this prohibition.

B. In or about any place where explosives or pyrotechnics are manufactured, stored, handled, or fired.

C. In or about logging or lumbering operations and paper mills.

D. In or about sawmills, lath mills, shingle mills, or cooperage stock manufacturing plants.

E. In or about mines, quarries, and sand or gravel pits.

F. In or about construction or building projects.

G. In or about ice harvesting operations.

H. On boats or vessels used for commercial purposes. Minors performing guide or other nonoperational services are not covered by this prohibition.

I. To operate or to assist in the operation of power-driven machinery, including but not limited to: industrial trucks (forklifts); meat saws and meat grinders; milling machines; punch presses, press brakes, and shears; and woodworking machinery such as circular saws, radial saws, jointers, and shaping machines.

J. To operate any nonautomatic elevator, lift, or hoisting machine.

K. To drive motor vehicles, except as follows:

(1) Sixteen-and 17-year-old minors may drive up to 24,000 pound, single-unit vehicles (excluding buses) and may carry passengers at any time with a class C license.

(2) Sixteen-and 17-year-old minors may drive over 24,000 pound, single-unit vehicles (excluding buses) with a class B license but may not carry passengers.

(3) Fifteen-year-old minors who have completed an approved driver education course may, with a restricted farm work license, drive a motor vehicle in accordance with Minnesota Statutes, section 171.041.

However, as provided in Minnesota Statutes, section 177.322, no one under 18 years of age shall operate a motor vehicle while in use as a carrier of persons for hire, nor shall any person under 18 years of age drive a passenger-carrying vehicle as a hired driver.

L. As a brakeman, fireman, engineer, motorman, or conductor for a railroad, street railway, or interurban railroad or in switching or gate-tending.

M. As a lifeguard. Minors who have received a Red Cross lifesaving certificate or its equivalent and who work under uninterrupted adult supervision are not covered by this prohibition.

N. In aerial acts using such equipment as flying rings, horizontal bars, or trapezes. Nor shall a minor be employed in weight-lifting, balancing, casting,

MINNESOTA RULES 1983

4209

GENERAL WAGE AND LABOR RULES 5200.0920

or human pyramiding acts, or as a rope walker, contortionist, or in other exhibitions dangerous or injurious to the life, limb, or health of the minor.

O. In the operation, erection, or dismantling of rides or machinery in an amusement park, street carnival, or traveling show, or in the loading or unloading of passengers on rides.

P. In any rooms constituting the place in which intoxicating liquors or nonintoxicating malt liquors are served or consumed or in any tasks involving the serving, dispensing, or handling of such liquors that are consumed on the premises except that:

(1) minors who have reached the age of 17 may be employed to perform bussing or dishwashing services in those rooms or areas of a restaurant, hotel, motel, or resort where the presence of intoxicating liquor is incidental to food service or preparation;

(2) minors who have reached the age of 17 may be employed to perform bussing or dishwashing services or to provide waiter or waitress service in rooms or areas where the presence of nonintoxicating malt liquor is incidental to food service or preparation;

(3) minors who have reached the age of 16 may be employed to provide musical entertainment in those rooms or areas where the presence of intoxicating liquor and nonintoxicating malt liquor is incidental to food service or preparation; and

(4) minors are not prevented from working at tasks which are not prohibited by other parts of these rules or the law in establishments where liquor is sold, served, dispensed, or handled in those rooms or areas where no liquor is consumed or served.

Q. In window-washing, wall-cleaning, painting, or other building maintenance or repair higher than 12 feet above the ground or floor level, using ladders, scaffolding, safety belts, outside vertical conveyors, or like equipment.

R. In oxyacetylene or oxyhydrogen welding.

S. In any occupation or activity, or on any site, which is hazardous or dangerous to life, limb, or health.

Statutory Authority: *MS s 181A.09*

5200.0920 PROHIBITED EMPLOYMENTS OF MINORS UNDER 16 YEARS OLD.

In addition to the restrictions in part 5200.0910, no minor under the age of 16 may be employed:

- A. in or about airport landing strips and taxi or maintenance aprons;
- B. except as stated in part 5200.0910, item K, subitem (3), as a driver of a motor vehicle or an outside helper thereon;
- C. as loaders or launchers for skeet or trap shooting;
- D. to lift or carry, or otherwise personally care for, patients in hospitals or nursing homes;
- E. to do welding of any kind;
- F. to operate or assist in the operation of machinery, including but not limited to:

(1) farm type tractors and other self-propelled vehicles, except that those minors trained under either the 4-H Federal Extension Service or the U.S. Office of Education Vocational Agriculture Training programs may work on equipment permitted by their certificate of training;

(2) laundry, rug cleaning, or dry cleaning equipment;

(3) sidewalk type snow blowers and other power-driven lawn and garden equipment;

5200.0920 GENERAL WAGE AND LABOR RULES

4210

(4) drill presses, milling machines, grinders, lathes, and such portable power-driven machinery as drills, sanders, and polishing and scrubbing equipment for floor maintenance;

(5) meat slicers;

(6) textile-making machinery; and

(7) bakery machinery;

G. in oiling, cleaning, or maintaining any power-driven machinery, either portable or stationary, while in motion or at rest;

H. in work involving the use of pits, racks, or lifting apparatus at service stations or in mounting tires on rims;

I. in processing plants to do work which includes killing, plucking, singeing, drawing, brining, smoking, slicing, grinding, chopping, or cutting operations;

J. in walk-in meat freezers or meat coolers, except that occasional entrance to such areas which is incidental to the occupation is not prohibited;

K. in any occupation in agriculture that the U.S. secretary of labor finds and declares to be particularly hazardous for the employment of children below the age of 16;

L. in any manufacturing or commercial warehouse, to do work which includes packaging, shelving, stock-clerking, or cleaning; or

M. in a car wash to attach cars to or detach them from mechanized conveyor lines or to operate or contact the car while it is connected to the conveyor apparatus.

Statutory Authority: *MS s 181A.09*

5200.0930 EXCEPTIONS TO PROHIBITIONS RELATED TO EMPLOYMENT OF MINORS.

Subpart 1. **Approved training programs.** Prohibitions related to employment do not apply to a minor being trained in a state-approved apprenticeship training program or to a minor enrolled in a training program approved by the Division of Vocational-Technical Education, Minnesota State Department of Education.

Subp. 2. **Tasks outside of area of hazard.** A minor who performs employment tasks which do not require being in or entering the immediate area of the hazardous operation, equipment, or materials is excluded from the prohibitions of parts 5200.0910 and 5200.0920.

Subp. 3. **High school graduates.** A minor who has reached the age of 17 and has graduated from high school shall be excluded from the prohibitions of part 5200.0910.

Subp. 4. **Parental corporations.** The prohibitions under parts 5200.0910 and 5200.0920 do not apply to a minor working for a corporation totally owned by one or both parents in which the daily corporate business is supervised by the parent or parents. In addition, with respect to agricultural employment, parts 5200.0910 and 5200.0920 do not apply to a minor employed by a family farm corporation as defined under Minnesota Statutes 1973, section 500.24 where the minor's parent is a member of the said family farm corporation.

Statutory Authority: *MS s 181A.09*

5200.0940 SPECIAL EXEMPTION PERMIT.

The commissioner may grant exemptions from any provisions of the act, pursuant to Laws of Minnesota 1974, chapter 432, section 7, subdivision 5, for an individual minor when it is determined that said exemption is in the best interests of a minor in accordance with both of the following:

A. the minor has a special talent, unique qualifications, or special need for the particular employment for which the exemption is sought; and

MINNESOTA RULES 1983

4211

GENERAL WAGE AND LABOR RULES 5200.1010

B.- the health, education, or welfare of the minor will not be detrimentally affected by the employment or by the environment in which the employment is to be conducted.

Statutory Authority: *MS s 181A.09*

5200.0950 EXEMPTION PERMIT APPLICATION.

Each permit application shall specify:

- A. name of minor;
- B. address of minor;
- C. address of parent(s) or guardian(s) if different than item B;
- D. a description of the proposed employment;
- E. proposed dates of employment from beginning to end; and
- F. particular section(s) of the act for which an exemption is sought.

Statutory Authority: *MS s 181A.09*

5200.0960 REVOCATION OF PERMIT.

The commissioner may revoke any permit when in his opinion the employment of the child in such employment is detrimental to said minor's health, education, or welfare.

Statutory Authority: *MS s 181A.09*

5200.0970 MONTHLY REPORT ON EMPLOYMENT AND AGE CERTIFICATES.

The following submissions shall be made to the Labor Standards Division:

A. The superintendent of schools, his agent, or authorized representative shall remit monthly one copy of each employment certificate.

B. The superintendent of schools, his agent, or authorized representative and superintendents, principals, or headmasters of independent or parochial schools shall remit monthly one copy of each age certificate.

Statutory Authority: *MS s 181A.09*

PREVAILING WAGE DETERMINATIONS

5200.1000 STATUTORY AUTHORITY AND PURPOSE.

Parts 5200.1000 to 5200.1120 are promulgated pursuant to the authority provided to the Minnesota Department of Labor and Industry by the provisions of Minnesota Statutes, section 175.171, subdivision 2 and the requisites of Minnesota Statutes, section 14.06. Their purpose is to provide procedures for prevailing wage determinations.

Statutory Authority: *MS s 175.171*

5200.1010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of all wage rate determinations, the following definitions shall apply.

Subp. 2. **Commercial construction.** "Commercial construction" means all building construction projects exclusive of residential construction.

Subp. 3. **Highway and heavy construction.** "Highway and heavy construction" means all construction projects which are similar in nature to those projects based upon bids as provided under Minnesota Statutes, section 161.32 for the construction or maintenance of highways or other public works and includes roads, highways, streets, airport runways, bridges, power plants, dams, and utilities.

Subp. 4. **Project.** As utilized in parts 5200.100 to 5200.1120 the term "project" means the erection, construction, remodeling, or repairing of commercial, residential, or public buildings or any highway and heavy construction.

Subp. 5. **Residential construction or agricultural construction.** "Residential construction or agricultural construction" means all construction, remodeling, or repairing of single or two family homes and structures appurtenant thereto including agricultural or farming buildings appurtenant to private farm residences when utilized to carry on primary farming operations.

Subp. 6. **State project.** "State project" means those projects which are subject to the requirements of Minnesota Statutes, sections 177.41 to 177.44.

Statutory Authority: *MS s 175.171*

5200.1020 PREVAILING WAGE DETERMINATIONS.

Subpart 1. **Duty to determine.** The department shall, at least once each calendar year, determine and certify prevailing wage rates applicable to state projects which are similar in nature to highway and heavy construction projects.

The department shall, upon the request of any state agency that is contemplating the advertisement for bids on a state project which is similar in nature to commercial construction projects, determine and certify prevailing wage rates applicable to said state project if a certification has not been made within the 12-month period prior to the request.

Prevailing wage rates applicable to state projects which are similar in nature to residential construction projects will be made upon request of a governmental official involved in the bidding process for a state project who desires such rates for insertion in a specific contract proposal.

Subp. 2. **Basis of wage survey.** Each wage survey shall be based upon work performed in the preceding calendar year and the resulting wage determinations will be certified following the close of the survey.

Subp. 3. **General basis of wage determinations.** Except as provided in subpart 4, all prevailing wage determinations shall be based upon the survey procedures contained in these parts.

Subp. 4. **Public hearings.** The department shall, pursuant to Minnesota Statutes, sections 177.43, subdivision 4, and 177.44, subdivision 3, conduct public hearings when necessary to determine county wage rate determinations. Such hearings shall be conducted within the county for which wage rates are being determined and shall be conducted as contested cases by a hearing examiner from the Office of Administrative Hearings.

Statutory Authority: *MS s 175.171*

5200.1030 BASIS FOR WAGE DETERMINATIONS.

Subpart 1. **By county.** Individual prevailing wage rates shall be made on a county-by-county basis and each prevailing wage rate shall be based upon work performed solely within the applicable class of labor.

Subp. 2. **Classes of labor.** For each county survey, the department shall issue wage determinations for all classes of labor commonly or customarily used in similar construction projects:

A. Where work has been performed in a class of labor in the county during the time period of the survey, the wage determination for that class of labor shall be based solely upon that work.

B. Where work was performed in any other classes of labor in two or more of the Minnesota counties physically adjacent to the county being surveyed, the department shall consider those classes of labor as ones which are customarily or commonly used in construction projects and determine wage rates for those classes in accordance with items D and E.

C. Where no work was performed in a class of labor either in the county being surveyed or in two or more of the adjacent Minnesota counties, no wage rate will be determined for that class of labor.

D. In looking to adjacent counties for determining additional classes of labor for which prevailing wage rates should be made, only those adjacent

Minnesota counties for which surveys are either in progress or for which wage rates have been determined by survey within the preceding 12 months shall be utilized.

E. In determining a wage rate for a class of labor based upon work performed in adjacent counties, all workers in the class of labor in all the adjacent counties shall be totaled and the wage rate shall be based upon the wage rate paid to the largest number as determined in accordance with these parts.

Subp. 3. **Additional classifications.** Following certification of wage rates for a county, no wage rates for additional classifications of labor shall be made for that county until such time that a subsequent survey of the county demonstrates utilization of those additional classes of labor.

Statutory Authority: *MS s 175.171*

5200.1040 CLASSES OF LABOR.

Each class of labor shall be based upon the particular nature of the work performed with consideration given to those trades, occupations, skills, or work generally considered within the construction industry as constituting distinct classes of labor. Wage determinations will be issued for those separate classes of labor which fall under the following general classes:

- A. Laborers.
- B. Power equipment operators.
- C. Truck drivers.

D. Special crafts. The following crafts shall constitute separate classes of labor: bricklayers, carpenters, cement masons, linemen, electricians, iron workers, painters, pipefitters, plumbers, plasterers, roofers, and sheet metal workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required. Workers reported as helpers shall be considered to be skilled laborers when making determinations.

E. In determining particular classes of labor, the department shall consider work classifications contained in collective bargaining agreements, apprenticeship agreements on file with the department, and customs and usage applicable to the construction industry.

F. Primary responsibility for classifying individual workers shall be upon the contractor.

G. Where a worker performs work in more than one class of labor, he shall be counted only once and placed in the class in which he worked the greatest number of hours.

H. The contractor reporting shall have the responsibility to determine the class in which the worker has worked the greatest number of hours on each project reported.

I. Workers employed within a class of labor as apprentices or trainees at reduced wage rates will not be included or counted within that class of labor.

Statutory Authority: *MS s 175.171*

5200.1050 WAGE SURVEY PROCEDURES.

Subpart 1. **Purpose.** The purpose of each county survey is to develop a data base upon which to determine prevailing wage rates which are reasonably comparable to those wage rates paid on similar projects in the area.

Subp. 2. **Procedures.** The following procedural steps shall be taken in each wage survey:

A. For each survey, the department shall identify contractors who performed projects during the previous calendar year.

B. For the purpose of identifying contractors who performed work on projects in each county, the department shall keep and maintain a mailing list of governmental officials, district, county, and city engineers, city clerks, administrators and zoning officials, and those contractor associations and labor organizations who have requested to be on the mailing list.

C. The department shall also keep and maintain lists of contractors for each county which lists shall be kept updated through applicable telephone directories, trade publications, and through previous wage survey contacts. Any contractor may request that its name be added to any county list.

D. Upon initiation of a wage survey the department will issue a form request for project identification to those entities referred to in item B. The request shall indicate the nature of the projects and the time period for which information is requested, and shall request the government official to identify contractors and their addresses who performed work during the survey time period. Such forms shall be completed and returned to the department within 33 days.

E. The department shall send to all those contractors identified as having performed work in the county through the forms returned from those entities referred to in item B, and to all those contractors whose names appear on the applicable county lists compiled under item C, a request for project information and a request for the identification of subcontractors who worked on those projects. Enclosed with the request shall be copies of the department's contractor reporting form.

Subp. 3. **Contractor reporting form.** For each project upon which the contractor performed work within the county during the time period of the survey, the contractor shall complete a separate contractor reporting form and provide the following information: description of project, dollar cost of the project, list of the employees who worked on the project, class of labor for each employee, wage rate paid each employee on the project and the hourly cost of fringe benefit for H & W, pension, vacation, training for each employee.

All contractor reporting forms and forms identifying subcontractors who worked on the projects shall be signed and dated by the contractor or its representative attesting that the information provided is a true and correct summary of the information contained in the contractor's payroll and business records.

The contractor reporting forms and forms identifying subcontractors shall be returned to the department within 30 days following the receipt of the request for information.

Information which is not received by the department within 33 days following the date upon which the request was mailed by the department shall not be used in making determinations.

Contractor reporting forms which do not report the names of workers, classes of labor, wage rates paid, description of project, type of construction, and location of project will not be utilized in making wage determinations. Any unsigned or incomplete forms which are received within the 33-day time period shall be returned to the contractor with a request that the form be properly completed. If that form is not returned to the department within 15 days from the date of mailing it shall be excluded from the survey. In no event shall information on unsigned contractor reporting forms be utilized in making determinations.

Subp. 4. **Additional procedures.** Upon learning the identification of subcontractors who performed work on projects within the county, the department shall proceed with the procedures provided in subpart 1, item E, and the subcontractors so contacted shall be subject to the same requirements provided under subpart 1, item E.

In addition to the mail procedures described in subpart 1, item E, the department shall make on-site visits to the offices of contractors or governmental representatives for the purposes of collecting project data and for auditing payrolls when necessary for the determination of prevailing wage rates. Information so collected, either through a review of the contractor's payrolls or copies of payrolls provided by contractors to government offices, will be utilized in making determinations provided that such information is compiled on an investigator's project worksheet and is signed by the investigator who compiled the information.

The number of workers in each class of labor and their respective wage rates shall be determined and reflected on a county abstract.

Statutory Authority: *MS s 175.171*

5200.1060 DETERMINING THE LARGEST NUMBER OF WORKERS AND THE PREVAILING WAGE RATE.

Each wage rate determination shall be based upon the actual wage rates paid to the largest number of workers within each labor classification reported in the survey. For purposes of determining the largest number of workers, each worker within a class of labor and his total hourly rate paid shall be tabulated. Total hourly rate includes the hourly rate plus the hourly contribution for all wage and fringe benefits. The largest number of workers with identical rates of pay within each classification shall determine the specific prevailing wage rate. When determining the prevailing wage rate and there is an equal number of workers (which represent the greatest number of workers) with differing hourly wage rates, the prevailing wage rate shall be the highest wage rate paid to those workers.

Example: four workers, each \$7 per hour; four workers, each \$8 per hour; two workers, each \$8.50 per hour. The prevailing wage rate will be determined as \$8 per hour.

Where a worker performs work on more than one project within the county, he shall be counted only once in the class of labor and at the wage rate paid on the most recent project within the time period of the survey.

Statutory Authority: *MS s 175.171*

5200.1070 APPRENTICES.

Subpart 1. Establishment of wage rates. Apprentices working on state projects are not subject to the prevailing wage rate determinations, except as they may be affected by registered apprenticeship agreements. The hourly rates of pay for such workers are established by the particular program to which the apprentice or trainee is subject.

Subp. 2. Definition. The term "apprentice" means:

A. a person employed and registered in a bona fide apprenticeship program registered with the U.S. Department of Labor or with a state apprenticeship agency; and

B. a person in his first 90 days of probationary employment as an apprentice who is not registered in the program but who has been certified by the U.S. Bureau of Apprenticeship and Training or a state apprenticeship agency or council to be eligible for probationary employment as an apprentice.

Subp. 3. Exceptions to definition. Any employee listed on a payroll for a state project who does not fall within the term "apprentice" contained in subpart 2 shall be paid the prevailing wage rate for the classification of work performed.

Statutory Authority: *MS s 175.171*

5200.1080 NOTICE OF WAGE DETERMINATIONS.

Upon certification of wage rates for a given county, the department shall publish notice of such certification in the State Register but need not publish the individual rates so certified. The certification date shall coincide with the date published in the State Register.

The notice published in the State Register shall indicate where copies of the determined rates may be obtained upon request.

The department shall maintain a list of all persons who request that copies of wage rate determinations be sent to them.

Copies of wage rate determinations shall be mailed within five days of their certification to those persons who have requested such notice and whose names appear on the list maintained by the department. The department may charge a reasonable fee for the copying and mailing of these notices as allowed under Minnesota Statutes, section 15.17, subdivision 4.

Statutory Authority: *MS s 175.171*

5200.1090 PETITION FOR RECONSIDERATION OF PREVAILING WAGE RATES.

Subpart 1. Right to reconsideration. Any person including contractor associations or labor organizations aggrieved by a final determination of a prevailing wage rate may petition the commissioner for reconsideration of that wage rate within 30 days following its certification. The petitioner shall indicate the county and class(es) of labor contested, the reason the petitioner believes the rate to be inaccurate, and the rates the petitioner believes to be correct.

Subp. 2. Informal conference. Within ten days following receipt of a petition for reconsideration, the department shall informally meet with the petitioner and any other interested person, associations, or labor organizations, to review the contested wage determination(s).

The petitioner shall be prepared to support his contentions with any documents or data he deems necessary.

The department shall be prepared to produce and review the data, summary sheets, and other documents upon which its determinations were based, and shall produce for the petitioner's inspection all such documents.

Subp. 3. Final decision. Following the informal conference, the department shall, within ten days, notify the petitioner of any decision modifying, changing, or reaffirming the contested wage rate or indicate to the petitioner that a survey will be necessary to resolve the contested wage rate(s).

Where the department determines that a new survey is necessary, such survey shall be conducted within 30 days. Thereafter, the department shall inform the petitioner by certified mail of its final decision based on that survey.

Subp. 4. Pending the procedures. No prevailing wage rate will be deemed to be vacated or suspended pending the resolution of a petition for reconsideration nor will the department request any state agency contemplating a state project to suspend, delay, or otherwise change its contract and bidding schedules due to any pending procedures resulting from a petition for reconsideration.

Subp. 5. Public hearing. Any person aggrieved by a final decision following reconsideration of a prevailing wage rate may, within 20 days after the decision, petition the commissioner for a public hearing in the manner of a contested case under the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.61. Upon receipt of a petition for a public hearing the commissioner shall order the initiation of a contested case in accordance with Minnesota Statutes, sections 14.48 to 14.56. All contested case hearings initiated herein shall be conducted in accordance with the rules of operation of the Office

MINNESOTA RULES 1983

4217

GENERAL WAGE AND LABOR RULES 5200.1100

of Administrative Hearings.

Statutory Authority: *MS s 175.171*

5200.1100 MASTER JOB CLASSIFICATIONS.

Subpart 1. **Requirement.** For purposes of parts 5200.1000 to 5200.1120, contractors must use the following codes and classifications in documenting classes of labor.

Subp. 2. Laborers.

CODE NO.

POSITION TITLE

- | | |
|-----|--|
| 101 | Laborer, common (general labor work) |
| 102 | Laborer, skilled (assisting skilled craft journeyman) |
| 103 | Laborer, Landscaping (gardener, sod layer and nurseryman) |
| 104 | Flagperson |
| 105 | Watchperson |
| 106 | Powderman |
| 107 | Pipelay (water, sewer and gas) |
| 108 | Tunnel miner |
| 109 | Underground and open ditch laborer (eight feet below starting grade level) |

Subp. 3. Power equipment operators.

CODE NO.

POSITION TITLE

- | | |
|-----|---|
| 201 | Air compressor operator |
| 202 | Asphalt, bituminous stabilizer plant operator |
| 203 | Dragline and/or other similar equipment with shovel type controls |
| 204 | Bituminous spreader and finishing operator |
| 205 | Bituminous spreader and bituminous finishing machine operator (helper) |
| 206 | Conveyor operator |
| 207 | Concrete distributor and spreader operator, finishing machine, longitudinal float operator, joint machine or spray operator |
| 208 | Concrete saw operator (multiple blade) (power operated) |
| 209 | Crushing plant operator (gravel and stone) or gravel washing, Crushing and screening plant operators |
| 210 | Curb machine |
| 211 | Front end loader operator up to and including one cubic yard |
| 212 | Fine grade operator |
| 213 | Fork lift operator |
| 214 | Front end loader operator |
| 215 | Helicopter pilot |
| 216 | Fireman or tank car heater operator |
| 217 | Grader or motor patrol, finishing, earthwork and bituminous |
| 218 | Grader operator (motor patrol) |
| 219 | Greaser (truck and tractor) |
| 220 | Hoist engineer |
| 221 | Self propelled chip spreader |
| 222 | Mechanic or welder |
| 223 | Oilers (power shovel, crane, dragline) |

MINNESOTA RULES 1983

5200.1100 GENERAL WAGE AND LABOR RULES

4218

- 224 Pick up sweeper
- 225 Pugmill operator
- 226 Roller operator, self propelled roller for compaction
- 227 Roller operator, up to and including six tons
for bituminous finishing and/or wearing courses
- 228 Roller operator, over six tons for bituminous
finishing and/or wearing courses
- 229 Scraper, 32 cubic yards and over
- 230 Self propelled vibrating packing operator (pad type)
- 231 Rubber tired tractor, back hoe attachment
- 232 Shouldering machine operator (power) (apsco or
similar type)
- 233 Slip form (power-driven) (paving)
- 234 Turnapull operator (or similar type)
- 235 Tractor operator, D2, TD6 or similar h.p. with power
take-off
- 236 Tractor operator, over D2, TD6 or similar h.p. with
power take-off
- 237 Power actuated augers and boring machine
- 238 Truck crane oiler

Subp. 4. Truck drivers.

CODE NO.	POSITION TITLE
----------	----------------

- | | |
|-----|---|
| 301 | Bituminous distributor driver |
| 302 | Dumpman |
| 303 | Greaser and truck serviceman |
| 304 | Self propelled packer operator |
| 305 | Truck driver (hauling machinery for contractors own
use including operation of hand or power
operator winches |
| 306 | Single axle or two axle unit |
| 307 | Tandem axle or three axle unit |
| 308 | Four axle unit |
| 309 | Five axle unit |

Subp. 5. Special crafts.

CODE NO.	POSITION TITLE
----------	----------------

- | | |
|-----|--------------------------|
| 401 | Asbestos workers |
| 402 | Boilermakers |
| 403 | Bricklayers |
| 404 | Carpenters |
| 405 | Carpet layers (linoleum) |
| 406 | Cement masons |
| 407 | Electricians |
| 408 | Elevator constructors |
| 409 | Glaziers |
| 410 | Lathers |
| 411 | Groundman |
| 412 | Ironworkers |
| 413 | Lineman |
| 414 | Millwright |
| 415 | Painters |
| 416 | Piledriverman |
| 417 | Pipefitters-steamfitters |
| 418 | Plasterers |

MINNESOTA RULES 1983

4219

GENERAL WAGE AND LABOR RULES 5200.1120

419	Plumbers
420	Roofer
421	Sheet metal workers
422	Sprinkler fitters
423	Terrazzo workers
424	Tile setters

Wage determinations shall be made for other classifications not listed if such other classifications are in general use in the area being surveyed.

Statutory Authority: *MS s 175.171*

5200.1110 POSTING OF WAGE RATES.

Each contractor and subcontractor performing work on a public project shall post on the project the applicable prevailing wage rates and hourly basic rates of pay for the county or area within which the project is being performed, including the effective date of any changes thereof, in at least one conspicuous place for the information of the employees working on the project. (Minnesota Statutes 1974, sections 177.43, subdivision 4 and 177.44, subdivision 5.) The information so posted shall include a breakdown of contributions for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefit required to be paid.

Statutory Authority: *MS s 175.171*

5200.1120 EFFECTIVE DATE OF WAGE RATE DETERMINATIONS.

Wage rate determinations previously certified by the department shall, subject to the review procedures contained in part 5200.1090, remain in effect until such time that new wage rates are determined in accordance with the provisions of parts 5200.1000 to 5200.1120 as amended.

Statutory Authority: *MS s 175.171*