

CHAPTER 5200

DEPARTMENT OF LABOR AND INDUSTRY

WAGES AND LABOR

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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 record or an age certificate issued by the local super-

intendent 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 the employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage and other penalties imposed for failure to keep and maintain records related to the employment of minors.

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 the minor's birth record, or a copy of the minor's 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 an 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; 181A.12*

History: *11 SR 1740; 17 SR 1279; L 2001 1Sp9 art 15 s 32*

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 WORKERS WITH DISABILITIES.

Subpart 1. **Permit required.** Subminimum wage rates may be paid to workers with disabilities only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely disabled, 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, except as provided under subpart 4. "Performance" is based on a time study of workers with disabilities as compared to a time study of nondisabled workers on the same job. The time study must be conducted under the same working conditions for the disabled and the nondisabled.

Subp. 2. **Limit on work force at subminimum wage.** No profit-making organization may employ disabled 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.

Subp. 3. **Rehabilitation facilities.** Rehabilitation facilities are excluded from the percentage limitations of numbers of employees and percentage of minimum wage contained in subparts 1 and 2, but not from the permit requirement.

Subp. 4. **United States labor permits.** Permits issued by the United States Department of Labor under Code of Federal Regulations, title 29, part 524 or 525, authorizing subminimum wage rates shall be accepted by the division in lieu of the permit required in subpart 1. Where the worker would otherwise be employed in a rehabilitation facility, the commission-

er of labor and industry may grant a special permit authorizing a wage rate of less than 50 percent of the minimum wage.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740; L 1988 c 689 art 2 s 268; L 2005 c 56 s 2*

5200.0040 EQUAL PAY FOR WORKERS WITH DISABILITIES.

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

Statutory Authority: *MS s 177.28*

History: *L 2005 c 56 s 2*

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 before any meal credit can be taken.

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 60 percent of the adult minimum wage rate for one hour of work per meal.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0070 LODGING ALLOWANCE.

Subpart 1. Conditions. If practical or economic realities of the employment situation require employees to accept lodging owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging only as provided in either subpart 2 or 3.

Subp. 2. Daily allowance. A lodging allowance not to exceed 75 percent of the adult minimum wage for one hour of work may be taken per day if the lodging is adequate, decent, and sanitary according to usual and customary standards.

Subp. 3. Fair market value. 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. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a written or oral lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Subp. 4. Seasonal employment. Where employment is available only on a seasonal basis, the maximum lodging credit will be as provided in subpart 2.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0080 GRATUITIES/TIPS CREDITS.

Subpart 1. [Repealed, 11 SR 1740]

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 amount of tips received and reported on signed statements by the employee divided by the number of hours worked in a given pay period and may not exceed the maximum credit set by Minnesota Statutes, section 177.28, subdivision 4.

Subp. 4. **Tip pooling or sharing of gratuities.** Pooling or sharing of gratuities may not be a condition of employment. An indirect service employee who benefits because the recipient shares the gratuity with him or her shall not have the remuneration considered in the calculation of his or her wages.

Subp. 4a. **Obligatory charges.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and/or surcharges which are included in the statement of charges given to the customer.

Subp. 4b. **Clear and conspicuous notice.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, clear and conspicuous notice that the obligatory charge is not a gratuity is notice clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.

Subp. 5. [Repealed, 11 SR 1740]

Subp. 6. **Direct service employee.** A "direct service employee" is one who in a given situation performs direct service for a customer and is to be considered a tipped employee. An indirect service employee is a person who assists a direct service employee, these include, but are not limited to, bus people, dishwashers, cooks, or hosts.

Subp. 7. **Credit cards or charges.** Gratuities presented to a direct service employee via inclusion on a charge or credit card shall be credited to that pay period in which they are received by the direct service employee and for which they appear on the direct service employee'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 direct service employee 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. **Divided gratuities.** When more than one direct service employee provides direct service to a customer or customers in a given situation such as banquets, cocktail and food service combinations, or other combinations, money presented by customers, guests, or patrons as a gratuity and divided among the direct service employees is not a violation of Minnesota Statutes, section 177.24, subdivision 3.

Subp. 9. [Repealed, 11 SR 1740]

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0090 DEDUCTIONS.

Subpart 1. **When prohibited.** Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or rental of uniforms or nonhome maintenance of uniforms, consumable supplies, travel expenses, for spoilage, for breakage or other damage, for cash shortages or losses resulting from omissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery, or fines for disciplinary purposes. "Consumable supplies" means materials required to perform duties of employment that are used up in the course of employment.

“Consumable supplies” may include, but are not limited to, materials used by cosmetologists in the care and beautification of the hair and body of customers, building and utility costs, office supplies, parts and materials used in manufacture or repair, and chemicals used in lawn care. “Travel expenses” means receipted out-of-pocket expenses for transportation, meals and lodging, or an agreed upon allowance, whichever is greater.

Subp. 2. **Indirect.** An indirect deduction is any recoupment or payment received by an employer by methods other than payroll deductions, such as cash payments or endorsing over of checks, or the purchase or rental of any of the items listed in Minnesota Statutes, section 177.24, subdivision 4, by the employee directly from the supplier.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

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 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.

Subpart 1. **General.** The minimum wage must be paid for all 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 or must remain on the premises until work is prepared or available. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Subp. 2. **On-call time.** An employee who is required to remain on the employer’s premises or so close to the premises that the employee cannot use the time effectively for the employee’s own purposes is working while on call. An employee who is not required to remain on or near the employer’s premises, but is merely required to leave word at the employee’s home or with company officials where the employee may be reached is not working while on call.

Subp. 3. **Off-duty.** Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee’s own purposes, are not hours worked.

Subp. 4. **Meals.** Bona fide meal periods are not hours worked. Bona fide meal periods do not include rest periods such as coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Thirty minutes or more is ordinarily long enough for a bona fide meal period. A shorter period may be adequate under special conditions. The employee is not completely relieved from duty if required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises, if the employee is otherwise completely freed from duties during the meal period. If the meal period is frequently interrupted by calls to duty, the employee is not relieved of all duties and the meal periods must be considered as hours worked.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0121 SLEEPING TIME AND CERTAIN OTHER ACTIVITIES.

Subpart 1. **Less than 24-hour duty.** An employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other

personal activities when not busy except as provided in Minnesota Statutes, section 177.23, subdivision 11.

Subp. 2. **Duty of 24 hours or more.** If an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleeping period. If a sleeping period is of more than eight hours, only eight hours may be excluded. Where no expressed or implied agreement to the contrary is present, the lunch periods and up to eight hours of sleeping time constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so that the employee cannot get a minimum of five hours of sleep, the entire period must be counted as hours worked.

Subp. 3. **Employees residing on employer's premises or working at home.** An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily, an employee may enjoy periods of complete freedom from all duties, during which the employee may engage in normal private pursuits. These free periods are not considered hours worked.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

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 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 sufficient to claim certain work is exempt where the execu-

tive 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 the person 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*

History: *17 SR 1279*

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*

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 the person's 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 the person 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 the hours worked to activities not essential to the person's professional work.

Statutory Authority: *MS s 177.28*

History: *17 SR 1279*

5200.0211 SALARY.

Subpart 1. **Predetermined weekly wage.** A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Subp. 2. **Weeks of no work.** Complete weeks in which an employee performs no work may be deducted from salary.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

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 non-outside sales work may not exceed 20 percent of the hours worked by employees who are not outside salespersons.

Statutory Authority: *MS s 177.28*

5200.0221 INDEPENDENT CONTRACTOR.

An independent contractor is not an employee. Parts 5224.0330 and 5224.0340 shall be used to determine whether an employment relation exists, except that control of the method and manner of performance is not the most important factor. All factors must be weighed to

determine whether the worker is economically dependent upon the business to which the worker provides services.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

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 with no itemized list of expenses) makes the individual nonexempt. See Minnesota Statutes, section 177.23, subdivision 7, clause (7).

Statutory Authority: *MS s 177.28*

History: *17 SR 1279*

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 (7).

Statutory Authority: *MS s 177.28*

5200.0241 STAFF MEMBER.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (5), “staff member” means any employee who spends more than half of the employee’s working hours in direct personal assistance and guidance to campers. “Staff member” does not include a regular organizational noncamp employee who may be assigned temporarily to camp and does not include camp personnel hired primarily for the purpose of maintenance or kitchen chores.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0242 SEASONAL BASIS DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, and part 5200.0070, “seasonal” means no more than 30 weeks in any calendar year. Any part of a calendar week shall be counted as a week.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0250 [Repealed, 11 SR 1740]

5200.0251 PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES.

Sums due to employees who cannot be located shall be reported as unclaimed property under Minnesota statutes.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0260 AGRICULTURE.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, “agriculture” means farming in all its branches and includes, but is not limited to, dairying, the field production,

cultivation, growing, and harvesting of any agricultural or horticulture commodity, and the raising of livestock, bees, fur-bearing animals, and poultry. Agriculture includes repair, maintenance, and construction work incidental to such operation and the cleaning, processing, preservation, loading, and transporting to market or storage of the farmer's own agricultural products. Industrial operations and processes that are more akin to manufacturing than to agriculture are not included. It does not include greenhouse work. It does not extend to outside services hired by the farmer. It does not include services performed for others, including, but not limited to, boarding or training of animals, lawn care, or landscaping.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0261 SPECIFIED DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), the term "specified" shall be applied on a workweek-to-workweek basis and means all employees paid a salary where the employer has two or fewer employees paid a salary. Where employees paid a salary exceed two in any given workweek, the employer must designate in the payroll records which two are exempt and notify the employees concerned. The burden of proof will be on the employer should an employee claim nonnotification.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0262 FARMING UNIT OR OPERATION.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), a "farming unit" is a legal entity engaged in agricultural activities as defined by part 5200.0260. A farming operation is one or more commonly owned farming units in which employees and/or equipment is shared. No more than two workers may be exempt under Minnesota Statutes, section 177.23, subdivision 7, clause (1), regardless of the number or location of the farming units that make up the farming operation.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0270 FAIR DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, a fair is an enterprise with or without payment of an admission fee that derives revenues principally from the sale of admission to events such as rides, sideshows, or exhibits. "Fair" includes amusement parks, carnivals, and circuses but does not include trade shows.

Statutory Authority: *MS s 177.28; 181A.12*

History: *11 SR 1740*

5200.0280 DISCRIMINATION AND TERMINATION.

Subpart 1. **Notice required.** All employers must notify employees of their rights regarding termination under Minnesota Statutes, sections 181.931 to 181.935.

Subp. 2. **Form and time of notice.** Notice is accomplished by posting summaries of Minnesota Statutes, sections 181.931 to 181.935 in a conspicuous and accessible place in or about the premises in which any employee works.

Statutory Authority: *MS s 181.934*

History: *12 SR 2425*

APPRENTICESHIP PROGRAMS AND AGREEMENTS

5200.0290 AUTHORITY, SCOPE, AND PURPOSE.

Parts 5200.0290 to 5200.0420 are adopted pursuant to Minnesota Statutes, section 178.041, subdivisions 1 and 2. Their purpose is to provide procedures for the voluntary apprentice program administration.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0300 PROCEDURE FOR ESTABLISHING PROGRAMS.

The procedure for establishing an approved apprenticeship program is as follows. The proposed program must be presented to the director of the Division of Voluntary Apprenticeship by the program sponsor in duplicate and must include a detailed job process for the occupation including the training standards, 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. If the program is approved by the director, a certificate of registration will be issued to the program sponsor. Within 90 days of the certificate being issued, the program sponsor must submit to the director of the Division of Voluntary Apprenticeship a copy of at least one apprenticeship agreement or the director may revoke the certificate of registration.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0310 MINIMUM TRAINING STANDARDS.

The minimum training standards to be met in an apprenticeship agreement must be the standards for the apprenticeship program registered with the division but must be no less than the Minnesota minimum standards listed in part 5200.0320.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0320 MINNESOTA MINIMUM STANDARDS.

Subpart 1. **Definitions.** When used in parts 5200.0290 to 5200.0420 the terms defined in this subpart have the meaning given them.

A. "Employer" means the apprenticeship sponsor. (Employer, apprenticeship committee, association of employers, or organization of employees.)

B. "Approval agency" or "registration agency" means the apprenticeship advisory council.

C. "Apprenticeship agreement" means a written agreement on a form prescribed by the commissioner 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. The form can be obtained from the Division of Voluntary Apprenticeship, Department of Labor and Industry, St. Paul, Minnesota.

D. "Apprentice" means 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 2,000 hours of reasonably continuous employment for the apprentice 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" means the individual designated by the employer to perform the duties described in subpart 9.

F. "Standards" means the Minnesota minimum standards of apprenticeship.

Subp. 2. **Policy.** It must be the policy of the employer that all apprentices employed in a trade covered under parts 5200.0290 to 5200.0420 must be governed by the terms of these standards and by the Minnesota voluntary apprenticeship law; and that the recruitment, selection, employment, and training of apprentices during their apprenticeship, must 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 Code of Federal Regulations, title 29, part 30, and under the Minnesota plan for equal employment opportunity in apprenticeship.

Subp. 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.

Subp. 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 must also be signed by the employer and submitted for approval to the approval agency. The

apprenticeship agreement must contain a clause making these standards a part of the agreement.

The approval agency must furnish approved copies of the agreement to:

- A. the apprentice;
- B. the employer; and
- C. other interested organizations or agencies as required.

Subp. 5. Term of apprenticeship. The term of apprenticeship must be designated in hours, months, or years for the individual trades included in these standards. For each trade to be included, a job process schedule including the total training term applicable must be attached to the standards registered with the division.

Subp. 6. Credit for previous experience. Credit may be awarded for previous experience and/or training which is applicable to training program requirements. If credit is awarded, the apprentice shall be advanced in the graduated wage schedule accordingly.

Subp. 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 that period the apprenticeship agreement will be terminated by the director of the Division of Voluntary Apprenticeship at the request in writing of either party. After the probationary period the apprenticeship agreement may be terminated by the director, by mutual agreement of all parties thereto, or canceled by the director for good and sufficient reason, including violation of minimum standards.

Subp. 8. Responsibilities of apprentice. Apprentices employed under these standards shall agree to be punctual and regular in attendance, and to endeavor to the best of their ability to perfect the required skills in the chosen craft.

Subp. 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; and
- C. perform other duties as may be assigned by the employer relative to the development and operation of an effective program of apprenticeship.

Subp. 10. Schedule of work processes and wage schedule. The apprentice must be given work experience and instruction according to the applicable job processes schedule in the apprenticeship program registered with the division which must be attached to the apprenticeship agreement. Training experience need not be in the exact order as listed in the schedule. Eighty percent adherence to the schedule will be considered adequate provided the full training term is accounted for. The job process schedule must provide for a minimum of 50 hours per year of training in safe work practices. For each job title there must be a minimum graduated wage schedule in the apprenticeship agreement which must be in percentages of journeyman wage and rate per hour.

Subp. 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 will be sufficient cause for cancellation of the apprenticeship agreement.

Subp. 12. Hours of work. Working hours for apprentices must be the same as for journeymen in the trade. Time spent in related instruction cannot be considered as hours of work as required by the job process schedule.

Subp. 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 must issue to the apprentice a certificate of completion of apprenticeship.

Subp. 14. Modification of program. Details of a program may be modified from time to time subject to approval by the director. Any modification cannot, at the time of modification, affect apprenticeship agreements then in effect without the consent of the parties to the

agreement. The employer may withdraw from the program by submitting a written request to the approval agency. The approval agency may cancel the standards of apprenticeship for good and sufficient reason, including violation of the Minnesota minimum standards in part 5200.0320.

Subp. 15. **Compliance with Minnesota plan for equal employment opportunity in apprenticeship.** The provisions of the apprenticeship program must comply with part 5200.0370 and must include an approved equal opportunity pledge.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0330 CANCELLATION OF APPRENTICESHIP AGREEMENT.

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

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0340 APPROVAL OF APPRENTICESHIP AGREEMENTS.

All apprenticeship agreements must be submitted to the Division of Voluntary Apprenticeship for approval.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0350 DUTIES OF SPONSORS.

It shall be the sponsor's obligation to:

A. Prepare the apprenticeship program for submission to the Division of Voluntary Apprenticeship.

B. Prepare apprenticeship agreements. All sponsors shall use the state of approved apprenticeship agreement form.

C. Each program operating under an apprenticeship committee pursuant to Minnesota Statutes, section 178.05, must in its standards provide for a tie-breaking procedure so it will be able to reach a majority decision.

D. 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 director of the Division of Voluntary Apprenticeship.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0360 TERMINATION, CANCELLATION, OR TRANSFER OF AGREEMENTS.

Subpart 1. **Written notice.** The Division of Voluntary Apprenticeship must 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 the Division of Voluntary 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*

History: *9 SR 2008*

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 must submit the following: two copies of the proposed program, and include in its standards the approved equal opportunity pledge.

B. Programs with five or more apprentices must submit the following: two copies of the proposed program, including in its standards the approved equal opportunity pledge and a written affirmative action plan adopting 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.

C. Requirements for program reciprocity under the Minnesota plan for equal employment opportunity in Apprenticeship and Code of Federal Regulations, title 29, part 30, are as follows:

(1) The sponsoring entity must operate a multistate program and not be in the building construction industry.

(2) The applicant shall offer evidence that the program meets the requirements of Code of Federal Regulations, title 29, part 30, in some other state. A certificate of registration is adequate evidence.

(3) A presentation of a request for reciprocity must be made to the Minnesota apprenticeship advisory council in writing for information purposes and for the council's advice on the request.

(4) The requesting party must offer proof which indicates that all apprentices will receive not less than 50 hours per year of safety training under the program being registered in this state.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0380 COMPLAINTS OF DISCRIMINATION.

Subpart 1. **Right to complain.** Any apprentices or applicants for apprenticeship who believes that they have 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 their selection have not been followed in the operation of an apprenticeship program may file a complaint. The complaint must be in writing and must 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 complaints, the referral of the complaint by the complainant to the agency must occur within 90 days or 30 days after the final decision of the review board, whichever is later.

Subp. 4. **Compliance reviews.** Where no review board exists, the apprenticeship agency may conduct 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*

History: *9 SR 2008*

5200.0390 DETERMINATION OF APPRENTICE WAGES.

Subpart 1. **Procedure.** Determination of the graduated schedule of wages for an apprenticeship agreement will be determined by the percentage rate used in the majority of in-

dividual apprenticeship agreements on file with the Division of Voluntary Apprenticeship in any particular trade. The beginning rate must be at least the federal or state minimum wage 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. If there is either a state or federal prevailing wage determination or apprenticeship agreement for a trade, the most current rate of the determination or agreement must be used as the journeyman wage rate.

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

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0400 APPRENTICESHIP COMMITTEE RULES.

Adoption of apprenticeship committee rules or changes must be submitted to the director of the Division of Voluntary Apprenticeship in writing for approval.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0410 CERTIFICATE OF COMPLETION.

Subpart 1. **Signature.** The completion certificate is the standard approved state certificate. This certificate must be signed by 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. For those trades for which a state license is issued by a state licensing authority, issuance of the certificate of completion of apprenticeship is conditioned on the apprentice having secured the appropriate license and is a part of the registered standards for licensed trades.

Subp. 2. **Written request from sponsor.** Before any certificate of completion is issued, the Division of Voluntary Apprenticeship must receive a request in writing from the sponsor. If the employer does not request the completion certificate or refuses to sign a certificate, the director of the Division of Voluntary Apprenticeship, after investigating the circumstances, shall issue the certificate without the employer's request or signature, providing the apprentice has fully completed the program in compliance with the terms of the apprenticeship agreement.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

5200.0420 MAINTENANCE OF RECORDS.

Subpart 1. **Advisory council's duty.** Minnesota apprenticeship advisory council business and records are kept by the Division of Voluntary Apprenticeship for the council.

Subp. 2. **Sponsor's duty.** Sponsors shall keep and maintain records of progress as required by the Division of Voluntary 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 must be kept on the sponsor's premises and must be accessible to all authorized personnel of the Division of Voluntary Apprenticeship. The definition of sponsor is the employer, association of employers, organization of employees, apprenticeship coordinator, or individual representing the joint apprenticeship committee. The Division of Voluntary Apprenticeship must be notified of the current address where records are kept and the person responsible for the records.

Subp. 3. **Retention and availability of records.** Under the state of Minnesota plan for equal employment opportunity in apprenticeship, it is the obligation of the sponsor to keep records as required by the Division of Voluntary 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 Division of Voluntary Apprenticeship. These records pertaining to applicants must be maintained in a manner that permits identification of minority and female participants.

Statutory Authority: *MS s 178.041*

History: *9 SR 2008*

FEE EMPLOYMENT AGENCIES

5200.0500 DEFINITIONS.

Subpart 1. **Scope.** For purposes of those provisions of law relating to fee employment agencies including Minnesota Statutes, sections 184.21 to 184.40 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. The applicant may withdraw the acceptance 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. The designated fee status for job listing services shall be limited to concurrent fee arrangement. The designated fee status for liability for placement 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:

- 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*

History: *13 SR 2868*

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.

Subpart 1. Job placement. Applicant contracts with employment agencies engaged in the placement of applicants 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."

Subp. 2. Job listing. Applicant contracts with job listing services shall contain the following statement: "I understand that a fee shall be due the job listing service at the time of contractual arrangements. No other fee shall be collected for services rendered, provided that fees for job placement may be charged and the fee arrangement for placement shall be contained in a separate contract."

Statutory Authority: *MS s 184.24 subd 1*

History: *13 SR 2868*

5200.0610 ACCEPTANCE FORM STANDARDS.

The acceptance form, with employment agencies engaged in placement activities, 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*

History: *13 SR 2868*

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.

E. A fee based on a concurrent fee arrangement shall be uniform for all applicants serviced.

Statutory Authority: *MS s 184.24*

History: *13 SR 2868*

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 except a concurrent fee arrangement shall be collected from an applicant before the actual start date.

Statutory Authority: *MS s 184.24 subd 1*

History: *13 SR 2868*

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.

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 for placement:

- (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.

U. The term "concurrent fee" shall be used to indicate the fee status for job listing services only.

Statutory Authority: *MS s 184.24*

History: *13 SR 2868*

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*

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 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*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

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.

Subpart 1. **Job placement.** 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.

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.

Subp. 2. **Job listing.** Job listing service record of service report shall include:

- A. total applicants serviced; and
- B. total amount of fees collected.

Statutory Authority: *MS s 184.24 subd 1*

History: *13 SR 2868*

CONTESTED CASES**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 D 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 171.322, 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 brake tender, firefighter, engineer, driver, 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, 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 3.2 percent 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 bus-ing 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 bus-ing or dishwashing services or to provide waiter or waitress service in rooms or areas where the presence of 3.2 percent malt liquor is incidental to food service or preparation;

(3) minors who have reached the age of 16 may be employed to provide musi-cal entertainment in those rooms or areas where the presence of intoxicating liquor and 3.2 percent 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, dis-pensed, 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*

History: *17 SR 1279; L 1991 c 249 s 31; 21 SR 458*

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;
 - (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 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*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

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
- 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 the commissioner's 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*

History: *17 SR 1279*

5200.0970 [Repealed, 11 SR 1740]

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. 1a. Adjacent county. "Adjacent county" means a county that shares a common border with another county.

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 5200.1000 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; 177.41 to 177.44*

History: *21 SR 1107*

5200.1020 PREVAILING WAGE DETERMINATIONS.

Subpart 1. **Highway and heavy construction.** 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 public and private highway and heavy construction projects where the estimated total cost of completing the project is \$25,000 or more.

Subp. 2. **Commercial type construction.** 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 public and private commercial projects where the estimated total cost of completing the project is \$2,500 or more.

Subp. 3. [Repealed, 21 SR 1107]

Subp. 4. **Residential type construction.** 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. 5. **Survey data; recent.** Each wage survey shall be based upon work performed in the 12 months preceding the date the survey is commenced and the resulting wage determinations will be certified following the close of the survey.

Subp. 6. **Survey procedure.** Except as provided in subpart 7, all prevailing wage determinations shall be based upon the survey procedures contained in these parts.

Subp. 7. **Public hearing.** 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 an administrative law judge from the Office of Administrative Hearings.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *8 SR 2274; L 1984 c 640 s 32; 21 SR 1107*

5200.1030 BASIS FOR HIGHWAY AND HEAVY CONSTRUCTION DETERMINATIONS.

Subpart 1. **Areas.** Prevailing wage rates for highway and heavy construction projects must be based on work performed within distinct areas. The counties included in each area are listed in items A to J.

A. Area 1: Carlton, Cook, Itasca, Koochiching, Lake, Pine, and Saint Louis.

B. Area 2: Beltrami, Clearwater, Hubbard, Kittson, Lake of the Woods, Marshall, Norman, Pennington, Polk, Red Lake, and Roseau.

C. Area 3: Aitkin, Cass, Crow Wing, Kanabec, Mille Lacs, Morrison, Todd, and Wadena.

D. Area 4: Becker, Big Stone, Clay, Douglas, Grant, Mahnommen, Otter Tail, Pope, Stevens, Swift, Traverse, and Wilkin.

E. Area 5: Benton, Isanti, Sherburne, Stearns, and Wright.

F. Area 6: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Steele, Rice, Wabasha, and Winona.

G. Area 7: Blue Earth, Faribault, Le Sueur, Nicollet, Sibley, and Waseca.

H. Area 8: Chippewa, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Meeker, McLeod, Murray, Pipestone, Redwood, Renville, and Yellow Medicine.

I. Area 9: Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, and Washington.

J. Area 10: Brown, Cottonwood, Jackson, Martin, Nobles, Rock, and Watonwan.

Subp. 2. **Labor classes.** Prevailing wage rates must be determined on an area basis and each prevailing wage rate must be based upon work performed solely within the applicable class of labor. For each area surveyed, the department shall issue wage determinations for all classes of labor commonly or customarily used in highway and heavy construction projects.

Subp. 2a. **Projects to be surveyed, criteria.** The determinations shall be made from projects on which construction work was done in the 12 months preceding the survey which are located in the area and where the estimated total cost of completing the project is \$25,000 or more.

A. A minimum of two projects in an area must be reported in order to issue a wage determination for the area.

B. A wage determination must be made for all classifications of labor utilized on a project. Where classes of labor expected to be utilized on a project for which the area prevailing wage determination is being made are not all represented in the projects in item A, the most recent rate determined for the class of labor is applicable.

C. If work is performed by a class of labor not defined by part 5200.1100, Master Job Classifications, the contracting agency shall assign a wage rate and the commissioner of labor and industry shall review and certify the assigned wage rate based on the most similar trade or occupation from the area wage determination. Within 90 days, the Commissioner of Labor and Industry must initiate the rulemaking procedure so that the classification will be defined in the Master Job Classifications in part 5200.1100.

Subp. 3. [Repealed, 21 SR 1107]

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *8 SR 2274; 21 SR 1107*

5200.1035 BASIS FOR COMMERCIAL CONSTRUCTION DETERMINATIONS.

Subpart 1. **County and labor classes.** Prevailing wage rates must be made on a county-by-county basis and each prevailing wage rate must be based on work performed solely within the applicable class of labor. For each county surveyed, the department shall issue wage determinations for all classes of labor commonly or customarily used in commercial construction projects.

Subp. 2. **Projects to be surveyed, criteria.** From information on file and submitted by interested persons, the determinations shall be made from projects on which construction work was done in the 12 months preceding the survey, which are located in the county or, if necessary, from adjacent counties, and where the estimated total cost of completing the project is \$2,500 or more.

A. A minimum of two projects in a county must be reported in order to issue a wage determination for the county.

B. If classes of labor expected to be used in a county for which the prevailing wage determination is being made are not all represented in the projects in item A, but work was performed in those classes of labor in two or more projects in any county adjacent to the county being surveyed, the department shall establish the wage determination for those classes of labor based solely upon those adjacent county projects.

C. In determining a wage rate for a class of labor based upon work performed in adjacent counties, all workers in a class of labor in all adjacent counties must be totaled and the wage rates must be based upon the wage rate paid to the largest number as determined in accordance with parts 5200.1020 to 5200.1060.

D. A wage determination must be made for all classifications of labor used on a project. Where classes of labor expected to be utilized in a county for which the prevailing

wage determination is being made are not all represented in the projects in item A, and not further determined in item B, the wage rate must remain the same as previously certified.

E. If work is performed by a class of labor not defined by part 5200.1100, Master Job Classifications, the Commissioner of Labor and Industry shall certify a wage rate which reflects the most similar trade or occupation from the project wage determination. Within 90 days, the Commissioner of Labor and Industry must initiate the rulemaking procedure so that the classification will be defined in the Master Job Classifications in part 5200.1100.

Statutory Authority: *MS s 177.41 to 177.44*

History: *21 SR 1107*

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, line persons, 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.

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, the "United States Department of Labor Dictionary of Occupational Titles," 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 on a project, the worker shall be placed in the class in which the person 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, helpers, supervisors, or trainees will not be included or counted within the wage survey.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *17 SR 1279; 21 SR 1107*

5200.1050 SURVEY PROCEDURES.

Subpart 1. **Scope.** The purpose of each survey is to develop a database upon which to determine prevailing wage rates for those classes of labor expected to be used on state projects based upon wage rates paid to the same classes of labor on similar projects in the area. In establishing the data, the procedural steps in subparts 2 to 4 shall be taken.

Subp. 2. **Wage reports.** The department shall regularly request from contractors, contractor organizations, labor organizations, and any other interested person, on forms available from or approved by the department, reports of construction wage rates paid by contractors on various types of highway and heavy projects where the estimated total cost of completing the project is \$25,000 or more and on commercial projects where the estimated total cost of completing the project is \$2,500 or more. The reports must be kept on file by the department according to the county or area in which the project for which the report is received was performed. The reports must list the name and address of the contractor, the name of the project, the location of the project, a description of the project, any identifying project numbers, a description of the work performed on the project, the approximate dollar cost of the project, the names of employees who worked 24 hours or more on a highway and heavy proj-

ect and eight hours or more on a commercial project, together with the class of labor for each employee, the wage rate paid each employee on the project, and the hourly cost of fringe benefits for health and welfare, pension, vacation, apprenticeship or training, and any other economic benefits paid for each employee. The forms shall be signed and dated by the organization or individual providing the information attesting that the information provided is true and correct.

Subp. 2a. Union wage reports. The department shall also keep local union wage and employment reports, on forms provided or approved by the department. The reports must set forth the classes of labor, trade, or occupation covered, the effective date of the contract, wage and fringe benefits paid under the contract, the duration of the contract, the dates of all adjustments to wages and fringe benefits together with the amount of the adjustments on each date, the geographic area where the contract is effective, the number of members employed within the geographic area covered by the contract, the type of projects covered by the contract, and a list of all contractors or employer associations signatory to the contract. The local union wage reports are to be signed and dated by a representative from the local union attesting that the information provided is true and correct.

Subp. 2b. Mailing lists. The department shall also keep and maintain a mailing list of governmental officials, district, county, and city engineers, city clerks, administrators, and zoning officials for each county. The department shall also keep and maintain a mailing list of contractors, contractor associations, labor organizations, and other individuals who have requested to be on a mailing list to be notified when any survey is about to be taken.

Subp. 2c. Notification of survey. Upon initiation of a survey, the department must notify the county engineer and all city engineers, city clerks, administrators, and zoning officials in the county to be surveyed. The notice will request local officials to submit reports of construction in the county in the preceding 12 months. The report shall include the names of the contractors and their addresses. The department must also notify all contractors, contractor associations, labor organizations, and other individuals who have requested to be notified when a survey for any county is about to be taken. That notice will request that interested individuals submit reports on forms available from or approved by the department concerning construction performed in the county during the preceding 12 months. The notice shall state that all reports of construction in the county must be returned to the department no later than 60 days following the date upon which the notice of the survey is mailed by the department. Information not timely received by the department shall not be used in establishing the prevailing wage rate for any class of labor. Any unsigned or incomplete forms received prior to the final date for receipt of the forms shall be returned to the individual, contractor, or labor organization, to the extent the individual, contractor, or labor organization can be identified, with a request that the form be properly completed. The department may use incomplete reports where the entity completing the form has provided all the information it has. If that form is not received by the department within 15 days from the date it is returned by mail to the individual, contractor, or labor organization, it shall be excluded from the survey. In no event shall information on unsigned reports of construction in the county be utilized in making wage determinations. All reports must be signed and dated by the organization or individual making the report attesting that the information provided is true and correct.

Subp. 3. [Repealed by amendment, 8 SR 2274]

Subp. 3a. Reports, attestations. Reports of construction wage rates and local union wage and employment reports shall specify that the individual signing the report attests that the information on the report is true and correct. The form shall specify that willful falsification of any information on the report may result in civil or criminal prosecution. In addition, a person, organization, or company who willfully submits false information will not be allowed to submit information from one to three years and all information submitted by that entity must be excluded from the wage determination.

Subp. 3b. [Repealed, 21 SR 1107]

Subp. 4. **Area calculation record.** The number of workers in each class of labor and their respective wage rates shall be determined and reflected on an area calculation record.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *8 SR 2274; 21 SR 1107*

5200.1060 DETERMINING LARGEST NUMBER OF WORKERS AND PREVAILING WAGE RATE.

Subpart 1. **Policy.** 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.

Subp. 2. **Procedure.** For purposes of determining the largest number of workers, each worker within a class of labor and the worker's total hourly rate paid shall be tabulated.

A. Total hourly rate includes the hourly rate plus the hourly contribution for all wage and fringe benefits.

B. The largest number of workers with identical rates of pay within each classification shall determine the specific prevailing wage rate.

C. 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 at \$7 per hour; four workers at \$8 per hour; two workers at \$8.50 per hour. The prevailing wage rate will be determined as \$8 per hour.

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

Subp. 3. **Collectively bargained rate.** If the prevailing wage rate determined for any given class of labor represents a collectively bargained rate, then the comparable current collectively bargained rate for the class of labor in the area shall be the prevailing wage rate.

Subp. 4. **Noncollectively bargained rate.** If the prevailing wage rate determined represents a rate other than a collectively bargained rate for any given class of labor, the rate so determined shall be the prevailing wage rate.

Subp. 5. **Change in rate due to contractual changes.** If the prevailing wage rate for any given class of labor represents a collectively bargained rate, and the collectively bargained rate for that class of labor will change during the 12 months immediately following the date upon which the wage rate is determined according to the terms of the collective bargaining contract by which the rate is established, the department shall certify that the rate for that class of labor shall also change accordingly on the effective date of the change pursuant to the collective bargaining contract.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *8 SR 2274; 17 SR 1279; 21 SR 1107*

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 the 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*

History: *17 SR 1279*

5200.1080 NOTICE OF WAGE DETERMINATIONS.

Upon certification of wage rates for a given county or area, 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; 177.41 to 177.44*

History: *21 SR 1107*

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 or her contentions with any documents or data the petitioner 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

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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 of Administrative Hearings.

Statutory Authority: *MS s 175.171*

History: *17 SR 1279*

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 nursery operator)
104	Flag person
105	Watch person
106	Blaster
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
Group 1	
201	Helicopter pilot
202	Crane with over 135-foot boom, excluding jib
203	Dragline, crawler, hydraulic backhoe and/or other similar equipment with shovel-type controls three cubic yards and over manufacturer's rated capacity
204	Pile driving when three drums are in use
205	Tower crane
Group 2	
206	Cableway
207	Concrete mixer, stationary plant
208	Derrick (guy or stiffleg) (power) (skids or stationary)
209	Dragline, crawler, hydraulic backhoe and/or similar equipment with shovel-type controls, up to three cubic yards manufacturer's rated capacity
210	Dredge or engineers, dredge (power) and engineer
211	Front end loader, five cubic yards and over
212	Grader or motor patrol
213	Locomotive crane operator
214	Mixer (paving) concrete paving, road mole, including mucking operations, conway or similar pile driving
216	Tractor - boom type
217	Truck crane - crawler crane
218	Tugboat 100 h.p. and over
Group 3	
219	Dual tractor
220	Elevating grader
221	Pumpcrete
222	Scraper - struck capacity 32 cubic yards and over
223	Self-propelled traveling soil stabilizer

Group 4

- 224 Air track rock drill
- 225 Asphalt bituminous stabilizer plant
- 226 Automatic road machine (CMI or similar)
- 227 Backfiller operator
- 228 Concrete batch plant
- 229 Bituminous roller (eight tons and over)
- 230 Bituminous spreader and finishing (power)
- 231 Cat tractors with rock wagons or similar types
- 232 Chip harvester and tree cutter
- 233 Concrete mixer on jobsite
- 234 Concrete mobil
- 235 Crushing plant (gravel and stone) or gravel
washing, crushing and screening plant
- 236 Curb machine
- 237 Dope machine (pipeline)
- 238 Drill rigs, heavy rotary or churn or cable drill
- 239 Fork lift or straddle carrier
- 240 Fork lift or lumber stacker
- 241 Front end loader, over one cubic yard
- 242 Hoist engineer (power)
- 243 Hydraulic tree planter
- 244 Launcher person (tanker person or pilot license)
- 245 Locomotive
- 246 Mechanic – welder
- 247 Milling, grinding, and planing machine
- 248 Multiple machines, such as air compressors,
welding machines, generators, pumps
- 249 Pavement breaker or tamping machine (power
driven) mighty mite similar type
- 250 Pickup sweeper, one cubic yard and over hopper capacity
- 251 Pipeline wrapping, cleaning or bending machine
- 252 Power plant engineer, 100 KWH and over
- 253 Power actuated horizontal boring machine, over
six inches
- 254 Pugmill
- 255 Rubber-tired farm tractor, backhoe attachment
- 256 Scraper, up to 32 cubic yards
- 257 Skid steer loader, over one cubic yard with
backhoe attachment
- 258 Slip form (power driven) (paving)
- 259 Tie tamper and ballast machine
- 260 Tractor, bulldozer
- 261 Trenching machine (sewer, water, gas)
- 262 Well point installation

Group 5

- 263 Air compressor, 600 CFM or over
- 264 Bituminous roller (under eight tons)
- 265 Concrete distributor and spreader finishing machine,
longitudinal float, joint machine, and spray
- 266 Concrete saw (multiple blade) (power operated)
- 267 Form trench digger (power)
- 268 Front end loader, up to and including one cubic yard
- 269 Gunite gunall
- 270 Hydraulic log splitter
- 271 Loader (barber greene or similar type)
- 272 Post hole driving machine/post hole auger
- 273 Power actuated auger and boring machine
- 274 Power actuated jack
- 275 Pump

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- 276 Self-propelled chip spreader (flaherty or similar)
- 277 Sheep foot compactor with blade – 200 h.p. and over
- 278 Shouldering machine (power) apSCO or similar type
including self-propelled sand and chip spreader
- 279 Stump chipper and tree chipper
- 280 Tree farmer (machine)
- 281 Bituminous spreader and bituminous finishing machine
operator (helper)
- Group 6
- 282 Conveyor
- 283 Dredge deck hand
- 284 Fire person or tank car heater
- 285 Gravel screening plant (portable not crushing
or washing)
- 286 Greaser (truck or tractor)
- 287 Lever person
- 288 Oiler (power shovel, crane, dragline, crushers,
and milling machines)
- 289 Power sweeper
- 290 Roller on gravel compaction
- 291 Self-propelled vibrating packer
- 292 Sheep foot roller
- 293 Tractor, wheel type, over 50 h.p.
- 294 Truck crane oiler

Subp. 4. Truck drivers.

Code No.	Position Title
Group 1	
301	Mechanic – welder
302	Tractor trailer driver
303	Truck driver (hauling machinery including operation of hand and power operated winches)
Group 2	
304	Four or more axle unit, straight body truck
Group 3	
305	Bituminous distributor driver
306	Bituminous distributor (one person operation)
307	Three axle units
Group 4	
308	Bituminous distributor spray operator (rear and oiler)
309	Dump person
310	Greaser
311	Pilot car driver
312	Rubber-tired, self-propelled packer
313	Two axle unit
314	Slurry operator
315	Tank truck helper (gas, oil, road oil, and water)
316	Tractor operator, under 50 h.p.

Subp. 4a. **Unit.** For the purposes of subpart 4, “unit” refers to all axles including the steering axle.

Subp. 5. Special crafts.

Code No.	Position Title
401	Heating and frost insulators
402	Boilermakers
403	Bricklayers
404	Carpenters
405	Carpet layers (linoleum)
406	Cement masons

407	Electricians
408	Elevator constructors
409	Glaziers
410	Lathers
411	Ground person
412	Ironworkers
413	Lineman
414	Millwright
415	Painters
416	Piledriver
417	Pipefitters – steamfitters
418	Plasterers
419	Plumbers
420	Roofer
421	Sheet metal workers
422	Sprinkler fitters
423	Terrazzo workers
424	Tile setters
425	Drywall taper
430	Wiring system technician
431	Wiring system installer
435	Asbestos abatement worker
436	Sign erector

Subp. 6. **Wage determinations.** 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 14.06; 175.171; 177.41 to 177.44*

History: *15 SR 965; 17 SR 1279; 19 SR 482; 21 SR 1107*

5200.1105 RENTAL RATES FOR TRUCKS ON PUBLIC WORKS HIGHWAY PROJECTS.

Drivers who own and operate trucks on contract work shall be compensated for their equipment according to the following formula: Truck Rental Rates Equals Labor Cost Plus Operating Cost.

Labor cost shall be the appropriate rate determined to be prevailing by the Department of Labor and Industry using existing survey methods under parts 5200.1000 to 5200.1120 and certified under part 5200.1100, subpart 4, truck drivers.

Operating cost shall be determined by averaging the itemized costs of operating a vehicle as submitted by at least five trucking firms of various size and five independent truck owner operators, all selected by the commissioner as representative of the industry.

The following items shall be considered as operating costs of a vehicle: the average cost of the vehicle depreciated over seven years, insurance, fuel, oil, tires, taxes, licenses, maintenance, repair, and any administrative expense associated with the vehicle's operation including truck brokers' fees. The truck broker fee is a portion of the minimum truck rental rate and shall be determined by annual survey.

Within 30 days of determination of rates, an informal conference will be held by the commissioner or the commissioner's representative, for the purpose of further input prior to certification. Interested parties shall be given at least ten days' prior notice of the conference date, time, and location, through publication in the State Register.

At the conference, the department shall produce and review the data, summary sheets, and other documents upon which its determination was based.

Notice of the certification and its effective date shall be published in the State Register in accordance with part 5200.1080.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *13 SR 660; 25 SR 1942*

5200.1106 COVERAGE OF PREVAILING WAGE LAW UNDER MINNESOTA STATUTES, SECTIONS 177.41 TO 177.44.

Subpart 1. **In general.** For purposes of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44, the prevailing wage rate which, for the purpose of all public works highway projects funded in whole or in part by state funds only, includes truck rental rates, must be paid for work under the contract.

Subp. 2. Work under the contract.

A. Except as provided in subpart 4, work under the contract means all construction activities associated with the public works project, including any required hauling activities on the site of or to or from a public works project and work conducted pursuant to a contract as defined by item B, regardless of whether the construction activity or work is performed by the prime contractor, subcontractor, trucking broker, trucking firms, independent contractor, or employee or agent of any of the foregoing entities, and regardless of which entity or person hires or contracts with another. The term "work under a contract" has the same meaning.

B. "Contract" means the written instrument containing the consideration and the terms of agreement between the prime contractor and the contracting agency for the construction of all or a part of:

- (1) a highway pursuant to Minnesota Statutes, sections 161.32 and 177.44;
- (2) a public works project pursuant to Minnesota Statutes, section 177.43 and chapter 16B; or
- (3) any public building or public works financed in whole or in part with state funds pursuant to Minnesota Statutes, sections 177.41 to 177.44.

Contract includes project proposals, plans, and specifications, and all requirements for labor, equipment, and materials found in such proposals, plans, and specifications.

C. "Prime contractor" means an individual or business entity that enters into a contract as defined in item B with the contracting agency.

D. "Contractor" means an individual or business entity that is engaged in construction or construction service-related activities including trucking activities either directly or indirectly through a contract as defined by item B, or by subcontract with the prime contractor, or by a further subcontract with any other person or business entity performing work under the contract.

Subp. 3. **Work considered to be under a contract.** Without limiting the application of parts 5200.1105 and 5200.1106 to other situations, the following are considered to be work under the contract.

A. Work performed by employees of a contractor or subcontractor that operates an asphalt or concrete plant, that was moved into a gravel pit, borrow pit, or other location not on the project, primarily to serve public works projects is considered work under the contract including the contractor's employees loading the equipment hoppers with materials obtained from the pit regardless of whether the pit meets the definition of commercial establishment.

B. The following hauling activities are included in hours worked and considered work under the contract for purposes of payment of prevailing wages and payment of the truck rental rate:

- (1) the hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the trucks leave the work site at some point;
- (2) the delivery of materials from any facility that does not meet the requirements of a commercial establishment to the project and the return haul to the starting location either empty or loaded;
- (3) the delivery of materials from another construction project site to the public works project and the return haul empty or loaded is considered work under the contract. Construction projects are not considered a commercial establishment;
- (4) the hauling required to remove any materials from the public works project to a location off the project site and the return haul if empty or if loaded from other than a commercial establishment;

(5) the delivery of materials or products by trucks hired by a contractor, sub-contractor, or agent thereof, from a commercial establishment; and

(6) delivery of sand, gravel, or rock, by or for a commercial establishment, which is deposited "substantially in place," either directly or through spreaders from the transporting vehicles is work under the contract. In addition, the return haul to the off-site facility empty or loaded is also considered work under the contract.

Subp. 4. Work not considered to be under a contract. Without limiting the application of parts 5200.1105 and 5200.1106 to other situations, the following work is not considered to be work under a contract:

A. the processing or manufacturing of materials or products by or for a commercial establishment;

B. the work performed by employees of the owner or lessee of a gravel pit or borrow pit that is a commercial establishment and that performs work in conjunction with a public works project by adding value to the sand, gravel, or rock contained in or delivered to the pit through the use of screening, washing, or crushing machines. This applies even if the machines are portable. This does not include the employees described in subpart 3, item A;

C. the delivery of processed or manufactured goods to a public works project by the employees of a commercial establishment including truck owner-operators hired by and paid by the commercial establishment, unless it is the delivery of mineral aggregate that is incorporated into the work under the contract by depositing the material substantially in place; or

D. multiple site hauling operations include secondary hauling activities in addition to the hauling of materials on and off the public works project in order to complete the truck's round trip haul. The hauling of materials or products between these secondary off-site facilities as part of a multiple site hauling operation is not considered work under the contract as long as the time spent hauling between the secondary sites is properly documented in the trucking records and the time spent hauling on and off the project is properly compensated as required in subpart 3.

Subp. 5. Commercial establishment, exceptions, definitions. For purposes of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44, the following terms have the meanings listed.

A. "Laborer or mechanic" means a worker in a construction industry labor class identified in or pursuant to part 5200.1100.

B. "Mineral aggregate" is sand, gravel, or crushed stone or rock, or earthen material suitable for roadway development, or mixtures of these naturally occurring substances with recycled materials, suitable for the base or shoulder of a highway or heavy project used to compose the shoulder, or support bituminous or concrete pavement, or used as a final gravel road surface. Mineral aggregate specifically does not include screenings, slag, riprap, recycled concrete and bituminous materials, ready-mix concrete, bituminous concrete, asphalt, mastic, mortar, plaster, macadam, and other similar processed or manufactured materials or products. Additionally, mineral aggregate does not include materials such as clay, topsoil, fill, dirt, silt, boulders, wall stone, loam, gumbo, loess, peat, muck, hardpan, or other similar soils or mixed earth.

C. "Incorporated into the work under the contract by depositing the material substantially in place" means the mineral aggregate is deposited on the project site directly or through spreaders where it can be spread from or compacted at the location where it was deposited. As used in this part, "depositing substantially in place" has the same meaning.

D. To be a "fixed place of business," a commercial establishment must serve the government project from a location from which it served the public prior to and at the time of advertisement of the public works contract and that has sufficient utilities and equipment to serve the public upon demand.

E. "Regularly supply" includes supply by a commercial establishment that is closed on a seasonal basis.

F. The determination of whether a facility is a "commercial establishment" is made on a location-by-location basis and on a product-by-product basis, not on a businesswide

basis. For purposes of parts 5200.1000 to 5200.1120 and Minnesota Statutes, sections 177.41 to 177.44, production of mineral aggregate is considered production of one product. Construction projects are not considered commercial establishments. A “commercial establishment” is a business entity that has not set up at the location from which deliveries are made primarily to serve public works projects and, prior to and at the time of advertisement of the public works contract, it:

- (1) owned or leased the land on which it operates;
- (2) possessed business records indicating that sales from the location from which deliveries are made are for other than the contracting agency’s public works contracts;
- (3) advertised the availability of material for sale to the general public from the location and had facilities available for effecting sales at the location; and
- (4) has acquired all necessary permits to operate from the location, and met all legal obligations of state and local regulations to excavate soils, sand, gravel, or rock for the purpose of receiving something of value for the product.

Subp. 6. Prohibited payment practices. The contractor, subcontractor, trucking broker, or other person making payment to an employee laborer, mechanic, worker, or truck owner–operator may not accept a rebate for the purpose of reducing or otherwise decreasing the value of the compensation paid.

Subp. 7. Trucking definitions. The following terms have the meanings given them for the purpose of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44.

A. “Independent truck owner–operator” is an individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner’s services to an entity which provides construction services to a public works project. In addition, an owner and operator of a vehicle that is licensed and registered as a truck, tractor, or truck–tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, only if each of the following factors are significantly present:

- (1) the individual, partnership, or corporation owns the equipment or holds it under a lease arrangement;
- (2) the individual, partnership, or corporation is responsible for the maintenance of the equipment;
- (3) the individual, partnership, or corporation bears the principal burden of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road, but not including brokerage fees;
- (4) the owner drives the equipment;
- (5) the owner determines the details and means of performing the services in conformance with regulatory requirements, operating procedures, and specifications of the entity with which the individual or corporation contracts; and
- (6) the individual or corporation enters into a legally binding agreement that specifies the relationship to be that of an independent contractor and not that of an employee.

B. “Trucking firm” is any legal business entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public works projects.

C. “Trucking broker” is an individual or business entity, the activities of which include, but are not limited to:

- (1) contracting to provide trucking services in the construction industry to users of such services;
- (2) contracting to obtain such services from providers of trucking services;
- (3) dispatching the providers of the services to do work as required by the users of the services;
- (4) receiving payment from the users in consideration of the trucking services provided; and
- (5) making payment to the providers for the services.

D. “Own” and “operate” have the following meanings and apply to independent truck owner–operators and trucking firms. The notation “truck owner–operator” for the pur-

poses of this part will apply to both the independent owner-operator and trucking firms unless otherwise defined:

(1) "Own" means to have a legal and rightful title to the vehicle or to have an approved lease on the vehicle.

(2) "Operate" means the owner either physically drives the vehicle or hires another to physically drive the vehicle but maintains the right to direct the day-to-day operations of the vehicle.

Subp. 8. Trucking provisions.

A. Independent truck owner-operators or the owner-driver of a trucking firm are not required to be paid the truck rental rate for:

(1) time spent repairing or maintaining, or waiting to repair or maintain, the truck owner-operator's equipment, except that repair, maintenance, or time spent waiting to load or unload which is attributable to the fault of the broker, contractor, agent thereof, or an employee of such entities, must be included in the hours worked and paid the hourly truck rental rate; and

(2) time spent correcting work that was not performed according to the prime contract that can be directly attributed to the negligence of the truck owner-operator.

B. Employees of a trucking firm must always receive the appropriate prevailing wage rate for any work performed under the contract.

C. The owner of a trucking firm may either drive the vehicles or hire employees to drive the vehicles. If the owner drives the vehicle, then the truck hire is subject to the truck rental rates. If the owner hires an employee to drive the vehicle, the truck hire is subject to the truck rental rates and the employee driver is subject to the appropriate prevailing wage rate. These provisions apply regardless of who owns any trailer being pulled by the truck.

Subp. 9. Required records.

A. Upon agreement of a contractor or trucking broker with an independent truck owner-operator to perform work under the contract, the contractor or broker must keep the following records for a period of at least six years following the payment for services:

(1) name, address, and social security number of the truck owner-operator;

(2) name, address, and phone number of the truck owner-operator's business and federal tax identification number;

(3) time period covered by the agreement between the truck owner-operator and the broker or contractor;

(4) date and amount of each payment to the truck owner-operator, and for each payment:

(a) number of hours the truck owner-operator performed work under the contract, not including hours excluded under subpart 7;

(b) type of trucking equipment used for each job by the truck owner-operator and if leased, the name and address of the individual or business entity which owns the equipment;

(c) type of services performed;

(d) hourly truck rental rate used to calculate the minimum payment due;

and

(e) an itemization of any deductions from the gross amount payable to the truck owner-operator;

(5) a copy of the owner's certificate of insurance; and

(6) a copy of the vehicle/truck registration.

The contractor or broker must also keep the same records for owner-drivers of trucking firms working on the public works project unless the owner-drivers' information is submitted along with the employee information to a contracting agency as listed under subpart 10.

B. Records required to be kept by item A and other similar records necessary to determine compliance with Minnesota Statutes, sections 177.41 to 177.44, as determined by the commissioner of the department of transportation or the department of labor and indus-

try, must be provided upon request accompanied by a certification form approved by the requesting department.

Subp. 10. **Required employee records.** Records pertaining to the proper payment of employees including, but not limited to, fringe benefit documentation, time cards, payroll ledgers, check registers, and canceled checks will be made available on request from the department for further review to determine if the employee was paid according to this part and Minnesota Statutes, sections 177.41 to 177.44. If the commissioner of the department of transportation or the department of labor and industry requests any or all of the following information, the contractor, subcontractor, or trucking firm shall submit the following information to the department together with any certification forms approved by the requesting department:

- A. name, address, and social security number of the employee;
- B. the classification of work performed defined by part 5200.1100, master job classification;
- C. the hours worked per day and per week;
- D. legal deductions made from the employee's check;
- E. contract information regarding the public works projects worked on by the employee;
- F. hourly rate of pay, including any fringe benefit information deemed necessary to determine if the proper prevailing wage rate was paid;
- G. project gross amount earned;
- H. weekly gross and net amount of payroll check; or
- I. in the case of the owner–driver, information described in items A to E shall be submitted along with the hourly truck rental rate paid to the owner–driver.

Subp. 11. **Effective date.** Parts 5200.1105 and 5200.1106 are effective June 25, 2001. Part 5200.1106 is effective for all projects as described in part 5200.1106, subpart 2, item B, that are advertised for bid on and after June 25, 2001. The new truck rental rates to be issued under part 5200.1105 are effective for all projects as described in part 5200.1106, subpart 2, item B, that are advertised on and after the publication in the State Register of the notice of certification of the truck rental rates.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

History: *25 SR 1942*

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*