

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to Fair Labor and Child Labor  
4 Standards

5

6 Rules as Adopted

7 5200.0010 PROOF OF MINOR'S AGE.

8 Subpart 1. Requirement. Employers claiming an employee is  
9 under 18 must have his or her birthdate substantiated by a birth  
10 certificate or an age certificate issued by the local  
11 superintendent of schools, or a photocopy of the employee's  
12 driver's license, or a Minnesota identification card issued by  
13 the Department of Transportation included in the payroll records  
14 kept for the employee. Failure to provide proof of the ages of  
15 minors employed makes the employer liable for the adult minimum  
16 wage and other penalties imposed for failure to keep and  
17 maintain records related to the employment of minors.

18 Subp. 2. [Unchanged.]

19

#### HANDICAPPED WORKERS

20 5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

21 Subpart 1. Permit required. Subminimum wage rates may be  
22 paid to handicapped workers only after receiving a permit from  
23 the Labor Standards Division. If no permit is issued, a worker,  
24 no matter how severely handicapped, shall be paid the minimum  
25 wage. The subminimum rate will be based on the extent to which  
26 the worker's performance is limited but in no case may it fall  
27 below 50 percent of minimum wage, except as provided under  
28 subpart 4. "Performance" is based on a time study of  
29 handicapped workers as compared to a time study of  
30 nonhandicapped workers on the same job. The time study must be  
31 conducted under the same working conditions for the handicapped  
32 and the nonhandicapped.

33 Subp. 2. Limit on work force at subminimum wage. No  
34 profit-making organization may employ handicapped workers at a  
35 subminimum wage for more than ten percent of its total work

1 force unless granted a special permit by the commissioner of  
2 labor and industry to exceed the ten percent limitation.

3 Subp. 3. Sheltered workshops. Sheltered workshops are  
4 excluded from the percentage limitations of numbers of employees  
5 and percentage of minimum wage contained in subparts 1 and 2,  
6 but not from the permit requirement.

7 Subp. 4. United States labor permits. Permits issued by  
8 the United States Department of Labor under Code of Federal  
9 Regulations, title 29, part 524 or 525, authorizing subminimum  
10 wage rates shall be accepted by the division in lieu of the  
11 permit required in subpart 1. Where the worker would otherwise  
12 be employed in a sheltered workshop, the commissioner of labor  
13 and industry may grant a special permit authorizing a wage rate  
14 of less than 50 percent of the minimum wage.

15 5200.0060 MEAL ALLOWANCE.

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

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

31 The meal allowance is 60 percent of the adult minimum wage  
32 rate for one hour of work per meal.

33 5200.0070 LODGING ALLOWANCE.

34 Subpart 1. Conditions. If practical or economic realities  
35 of the employment situation require employees to accept lodging

1 owned or controlled by the employer, or where the employee must  
2 accept that lodging as a condition of employment, the employer  
3 may credit toward the minimum wage the cost of the lodging only  
4 as provided in either subpart 2 or 3.

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

9 Subp. 3. **Fair market value.** Lodging, the nature of which  
10 is ordinarily and commonly considered to be a tenancy in the  
11 chief place of residence of the employee, shall be credited  
12 toward the minimum wage of that employee at the rate of the fair  
13 market value of the lodging. Where more than one employee  
14 shares the same residence, the lodging allowance for the total  
15 number of employees sharing the residence shall not exceed the  
16 fair market value of the residence. The tenancy shall be  
17 evidenced by a written or oral lease agreement providing for at  
18 least a month-to-month tenancy, and shall include exclusive,  
19 self-contained bathroom and kitchen facilities.

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

23 5200.0080 GRATUITIES/TIPS CREDITS.

24 Subpart 1. [See Repealer.]

25 Subp. 2. [Unchanged.]

26 Subp. 3. **Computation of tip credit.** Tip credit is based  
27 on the amount of tips received and reported on signed statements  
28 by the employee divided by the number of hours worked in a given  
29 pay period and may not exceed the maximum credit set by  
30 Minnesota Statutes, section 177.28, subdivision 4.

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

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

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

17 Subp. 5. [See Repealer.]

18 Subp. 6. **Direct service employee.** A "direct service  
19 employee" is one who in a given situation performs direct  
20 service for a customer and is to be considered a tipped  
21 employee. An indirect service employee ~~includes, but is a~~  
22 person who assists a direct service employee, these include, but  
23 are not limited to, bus people, dishwashers, cooks, or hosts, or  
24 ~~others-who-assist-a-direct-service-employee.~~

25 Subp. 7. **Credit cards or charges.** Gratuities presented to  
26 a direct service employee via inclusion on a charge or credit  
27 card shall be credited to that pay period in which they are  
28 received by the direct service employee and for which they  
29 appear on the direct service employee's tip statement.

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

35 Subp. 8. **Divided gratuities.** When more than one direct  
36 service employee provides direct service to a customer or

1 customers in a given situation such as banquets, cocktail and  
2 food service combinations, or other combinations, money  
3 presented by customers, guests, or patrons as a gratuity and  
4 divided among the direct service employees is not a violation of  
5 Minnesota Statutes, section 177.24, subdivision 3.

6 Subp. 9. [See Repealer.]

7 5200.0090 DEDUCTIONS.

8 Subpart 1. **When prohibited.** Deductions from the minimum  
9 wage, whether direct or indirect, may not be made for shortages  
10 in money receipts or merchandise, for the purchase or rental of  
11 uniforms or nonhome maintenance of uniforms, consumable  
12 supplies, travel expenses, for spoilage, for breakage or other  
13 damage, for cash shortages or losses resulting from omissions or  
14 other errors, for walkouts, bad checks, bad credit slips,  
15 missing guest checks, or robbery, or fines for disciplinary  
16 purposes. "Consumable supplies" means materials required to  
17 perform duties of employment that are used up in the course of  
18 employment. "Consumable supplies" may include, but are not  
19 limited to, materials used by cosmetologists in the care and  
20 beautification of the hair and body of customers, building and  
21 utility costs, office supplies, parts and materials used in  
22 manufacture or repair, and chemicals used in lawn care. "Travel  
23 expenses" means receipted out-of-pocket expenses for  
24 transportation, meals and lodging, or an agreed upon allowance,  
25 whichever is greater.

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

32 5200.0120 HOURS WORKED.

33 Subpart 1. **General.** The minimum wage must be paid for all  
34 hours worked. Hours worked include training time, call time,  
35 cleaning time, waiting time, or any other time when the employee

1 must be either on the premises of the employer or involved in  
2 the performance of duties in connection with his or her  
3 employment or must remain on the premises until work is prepared  
4 or available. Rest periods of less than 20 minutes may not be  
5 deducted from total hours worked.

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

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

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

33 5200.0121 SLEEPING TIME AND CERTAIN OTHER ACTIVITIES.

34 Subpart 1. **Less than 24-hour duty.** An employee who is  
35 required to be on duty for less than 24 hours is working even

1 though the employee is permitted to sleep or engage in other  
2 personal activities when not busy except as provided in  
3 Minnesota Statutes, section 177.23, subdivision 11.

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

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

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

28 5200.0211 SALARY.

29       Subpart 1. **Guaranteed Predetermined weekly wage.** A salary  
30 is not an hourly rate. An employee is paid a salary if the  
31 employee, through agreement with an employer, is guaranteed a  
32 predetermined wage for each workweek. An employee may still be  
33 salaried even if complete days absent are deducted from salary  
34 for reasons other than no work available. Should those  
35 deductions reduce the salary for the workweek below the minimum

1 salary required by Minnesota Statutes, section 177.23,  
2 subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the  
3 employer will lose the exemption in that workweek.

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

6 5200.0221 INDEPENDENT CONTRACTOR.

7 An independent contractor is not an employee. Parts  
8 5222.0330 and 5222.0340 shall be used to determine whether an  
9 employment relation exists, except that control of the method  
10 and manner of performance is not the most important factor. All  
11 factors must be weighed to determine whether the worker is  
12 economically dependent upon the business to which the worker  
13 provides services.

14 5200.0241 STAFF MEMBER.

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

23 5200.0242 SEASONAL BASIS DEFINED.

24 For purposes of Minnesota Statutes, section 177.23,  
25 subdivision 7, and part 5200.0070, "seasonal" means no more than  
26 30 weeks in any calendar year. Any part of a calendar week  
27 shall be counted as a week.

28 5200.0251 PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING  
29 EMPLOYEES.

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

32 5200.0260 AGRICULTURE.

33 For purposes of Minnesota Statutes, section 177.23,



1 subdivision 7, "agriculture" means farming in all its branches  
2 and includes, but is not limited to, dairying, the field  
3 production, cultivation, growing, and harvesting of any  
4 agricultural or horticulture commodity, and the raising of  
5 livestock, bees, fur-bearing animals, and poultry. Agriculture  
6 includes repair, maintenance, and construction work incidental  
7 to such operation and the cleaning, processing, preservation,  
8 loading, and transporting to market or storage of the farmer's  
9 own agricultural products. Industrial operations and processes  
10 that are more akin to manufacturing than to agriculture are not  
11 included. It does not include greenhouse work. It does not  
12 extend to outside services hired by the farmer. It does not  
13 include services performed for others, including, but not  
14 limited to, boarding or training of animals, lawn care, or  
15 landscaping.

16 5200.0261 SPECIFIED DEFINED.

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

26 5200.0262 FARMING UNIT OR OPERATION.

27 For purposes of Minnesota Statutes, section 177.23,  
28 subdivision 7, clause (1), a "farming unit" is a legal entity  
29 engaged in agricultural activities as defined by part  
30 5200.0260. A farming operation is one or more commonly-owned  
31 farming units in which employees and/or equipment is shared. No  
32 more than two workers may be exempt under Minnesota Statutes,  
33 section 177.23, subdivision 7, clause (1), regardless of the  
34 number or location of the farming units that make up the farming  
35 operation.

1 5200.0270 FAIR DEFINED.

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

8

9 REPEALER. Minnesota Rules, parts 5200.0080, subparts 1, 5,  
10 and 9; 5200.0250; and 5200.0970, are repealed.