

CHAPTER 177

MINIMUM WAGES

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177.23 DEFINITIONS.

[For text of subds 1 to 3, see M.S.1984]

Subd. 4. "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States, check on banks convertible into cash on demand at full face value or, except for instances of written objection to the employer by the employee, direct deposit to the employee's choice of demand deposit account, subject to allowances permitted by rules of the department under section 177.28.

[For text of subds 5 and 6, see M.S.1984]

Subd. 7. "Employee" means any individual employed by an employer but does not include:

(1) two or fewer specified individuals employed at any given time in agriculture on a farming unit or operation who are paid a salary;

(2) any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week;

(3) an individual under 18 who is employed in agriculture on a farm to perform services other than corn detasseling or hand field work when one or both of that minor hand field worker's parents or physical custodians are also hand field workers;

(4) for purposes of section 177.24, an individual under 18 who is employed as a corn detasseler;

(5) any staff member employed on a seasonal basis by a nonprofit organization for work in an organized children's resident or day camp operating under a permit issued under section 144.72;

(6) any individual employed in a bona fide executive, administrative, or professional capacity, or a salesman who conducts no more than 20 percent of his sales on the premises of the employer;

(7) any individual who renders service gratuitously for a nonprofit organization;

(8) any individual who serves as an elected official for a political subdivision or who serves on any governmental board, commission, committee or other similar body, or who renders service gratuitously for a political subdivision;

(9) any individual employed by a political subdivision to provide police or fire protection services or employed by an entity whose principal purpose is to provide police or fire protection services to a political subdivision;

(10) any individual employed by a political subdivision who is ineligible for membership in the public employees retirement association under section 353.01, subdivision 2b, clause (a), (b), (d), or (i);

(11) any driver employed by an employer engaged in the business of operating taxicabs;

- (12) any individual engaged in babysitting as a sole practitioner;
- (13) for the purpose of section 177.25, any individual employed on a seasonal basis in a carnival, circus, or fair;
- (14) any individual under 18 working less than 20 hours per workweek for a municipality as part of a recreational program;
- (15) any individual employed by the state as a natural resource manager 1, 2, or 3 (conservation officer);
- (16) any individual in a position for which the United States Department of Transportation has power to establish qualifications and maximum hours of service under United States Code, title 49, section 304;
- (17) any individual employed as a seafarer. The term "seafarer" means a master of a vessel or any person subject to the authority, direction, and control of the master who is exempt from federal overtime standards under United States Code, title 29, section 213(b)(6), including but not limited to pilots, sailors, engineers, radio operators, firefighters, watchmen, pursers, surgeons, cooks, and stewards;
- (18) any individual employed by a county in a single family residence owned by a county home school as authorized under section 260.094 if the residence is an extension facility of that county home school, and if the individual as part of his employment duties resides at the residence for the purpose of supervising children as defined by section 260.015, subdivision 2; or
- (19) nuns, monks, priests, lay brothers, lay sisters, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals, and other nonprofit institutions operated by the church or religious order.

[For text of subds 8 to 11, see M.S.1984]

History: *1Sp1985 c 13 s 274,275*

177.24 PAYMENT OF MINIMUM WAGES.

[For text of subds 1 and 2, see M.S.1984]

Subd. 3. Sharing of gratuities. For purposes of this chapter, any gratuity received by an employee or deposited in or about a place of business for personal services rendered by an employee is the sole property of the employee. No employer may require an employee to contribute or share a gratuity received by the employee with the employer or other employees or to contribute any or all of the gratuity to a fund or pool operated for the benefit of the employer or his employees. This section does not prevent an employee from voluntarily and individually sharing his gratuities with other employees. The agreement to share gratuities must be made by the employees free of any employer participation. The commissioner may require the employer to pay restitution in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the commissioner may make a determination of gratuities diverted based on available evidence and mediate a settlement with the employer.

Subd. 4. Unreimbursed expenses deducted. Deductions, direct or indirect, from wages or gratuities not authorized by this subdivision may only be taken as authorized by sections 177.28, subdivisions 3 and 4, 181.06, and 181.79. Deductions, direct or indirect, for up to the full cost of the uniform or equipment as listed below, may not exceed \$50. No deductions, direct or indirect, may be made for the

items listed below which when subtracted from wages would reduce the wages below the minimum wage:

(a) purchased or rented uniforms or specially designed clothing required by the employer, by the nature of the employment, or by statute as a condition of employment, which is not generally appropriate for use except in that employment;

(b) purchased or rented equipment used in employment, except tools of a trade, a motor vehicle, or any other equipment which may be used outside the employment;

(c) consumable supplies required in the course of that employment;

(d) travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

Subd. 5. **Expense reimbursement.** An employer, at the termination of an employee's employment, must reimburse the full amount deducted, directly or indirectly, for any of the items listed in subdivision 4. When reimbursement is made, the employer may require the employee to surrender any existing items for which the employer provided reimbursement.

History: 1Sp1985 c 13 s 276-278

177.27 POWERS AND DUTIES OF THE COMMISSIONER.

Subdivision 1. **Examination of records.** The commissioner may enter during reasonable office hours or upon request and inspect the place of business or employment of any employer of employees working in the state, to examine and inspect books, registers, payrolls, and other records of any employer that in any way relate to wages, hours, and other conditions of employment of any employees. The commissioner may transcribe any or all of the books, registers, payrolls, and other records as he deems necessary or appropriate and may question the employees to ascertain compliance with sections 177.21 to 177.35. The commissioner may investigate wage claims or complaints by an employee against an employer if the failure to pay a wage may violate Minnesota law or an order or rule of the department.

Subd. 2. **Submission of records; penalty.** The commissioner may require the employer of employees working in the state to submit to the commissioner photocopies, certified copies, or, if necessary, the originals of employment records which the commissioner deems necessary or appropriate. The records which may be required include full and correct statements in writing, including sworn statements by the employer, containing information relating to wages, hours, names, addresses, and any other information pertaining to the employer's employees and the conditions of their employment as the commissioner deems necessary or appropriate.

The commissioner may require the records to be submitted by certified mail delivery or, if necessary, by personal delivery by the employer or a representative of the employer, as authorized by the employer in writing.

The commissioner may fine the employer up to \$100 for each failure to submit or deliver records as required by this section. This penalty is in addition to any penalties provided under section 177.32, subdivision 1.

Subd. 3. **Adequacy of records.** If the records maintained by the employer do not provide sufficient information to determine the exact amount of back wages due an employee, the commissioner may make a determination of wages due based on available evidence and mediate a settlement with the employer.

Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with sections 177.21 to 177.35, 181.032, 181.101, 181.13,

181.14, 181.145, and 181.79, or with any rule promulgated under section 177.28. The department shall serve the order upon the employer or his authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of his objection to the order with the commissioner within ten days after being served with the order. A public hearing must then be held in accordance with sections 14.57 to 14.70.

Subd. 5. **Civil actions.** The commissioner may bring an action in the district court where an employer resides or where the commissioner maintains an office to enforce or require compliance with orders issued under subdivision 4.

Subd. 6. **Employer liability.** Employers are liable to employees for back wages and gratuities as computed by the department or, if contested by the employer, as awarded in a public hearing. The commissioner may establish escrow accounts for purposes of distributing back wages and gratuities. In addition, hearing costs of up to ten percent of any back wages and gratuities awarded may be assessed against the employer by the administrative law judge and paid to the commissioner if the administrative law judge finds that the employer had no meritorious defense against the claim. The penalty provided under this subdivision for failure to pay back wages and gratuities does not apply to compliance orders issued to an employer under this section before July 1, 1985. This subdivision does not prevent an employee from prosecuting a claim for wages or gratuities.

History: 1Sp1985 c 13 s 279

177.28 POWER TO MAKE RULES.

[For text of subds 1 to 3, see M.S.1984]

Subd. 4. An employee who receives \$35 or more per month in gratuities is a tipped employee. An employer is entitled to a credit in an amount up to 20 percent of the minimum wage which a tipped employee receives; except that effective January 1, 1985, the credit is reduced to 15 percent; effective January 1, 1986, the credit is reduced to ten percent; effective January 1, 1987, the credit is reduced to five percent; and effective January 1, 1988, the credit is eliminated. The credit against the wages due may not be taken unless at the time the credit is taken the employer has received a signed statement for that pay period from the tipped employee stating the amount of gratuities received during that pay period that he did receive and retain during that pay period all gratuities received by him in an amount equal to or greater than the credit applied against the wages due by his employer. The statements shall be maintained by the employer as a part of his business records. The employer may hold an employee's check until the signed statement for that period, stating the amount of gratuities, is received.

[For text of subds 5 and 6, see M.S.1984]

History: 1Sp1985 c 13 s 280

177.295 [Repealed, 1985 c 248 s 35]

177.32 PENALTIES.

Subdivision 1. **Misdemeanors.** An employer who does any of the following is guilty of a misdemeanor:

(1) hinders or delays the commissioner in the performance of duties required under sections 177.21 to 177.35;

(2) refuses to admit the commissioner to the place of business or employment of the employer, as required by section 177.27, subdivision 1;

(3) repeatedly fails to make, keep, and preserve records as required by section 177.30;

(4) falsifies any record;

(5) refuses to make any record available, or to furnish a sworn statement of the record or any other information as required by section 177.27;

(6) repeatedly fails to post a summary of sections 177.21 to 177.35 or a copy or summary of the applicable rules as required by section 177.31;

(7) pays or agrees to pay wages at a rate less than the rate required under sections 177.21 to 177.35; or

(8) otherwise violates any provision of sections 177.21 to 177.35.

[For text of subd 2, see M.S.1984]

History: *1Sp1985 c 13 s 281*