

CHAPTER 177

LABOR STANDARDS AND WAGES

177.23 Definitions.
177.24 Payment of minimum wages.

177.255 Payroll card accounts.

177.23 DEFINITIONS.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **Wage.** "Wage" means compensation due to an employee by reason of employment, payable in:

- (1) legal tender of the United States;
- (2) check on banks convertible into cash on demand at full face value;
- (3) except for instances of written objection to the employer by the employee, direct deposit to the employee's choice of demand deposit account; or
- (4) an electronic fund transfer to a payroll card account that meets all of the requirements of section 177.255, subject to allowances permitted by rules of the department under section 177.28.

[For text of subs 5 and 6, see M.S.2004]

Subd. 7. **Employee.** "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 an organization for work in an organized 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 salesperson who conducts no more than 20 percent of 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 (1), (2), (4), or (9);
- (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, fair, or ski facility;

(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 31502;

(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, security guards, 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 260B.060 if the residence is an extension facility of that county home school, and if the individual as part of the employment duties resides at the residence for the purpose of supervising children as defined by section 260C.007, subdivision 4; 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.2004]

History: 2005 c 10 art 1 s 33; 2005 c 158 s 1

NOTE: The amendment to subdivision 4 by Laws 2005, chapter 158, section 1, expires May 31, 2007. Laws 2005, chapter 158, section 4.

177.24 PAYMENT OF MINIMUM WAGES.

Subdivision 1. **Amount.** (a) For purposes of this subdivision, the terms defined in this paragraph have the meanings given them.

(1) "Large employer" means an enterprise whose annual gross volume of sales made or business done is not less than \$625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(2) "Small employer" means an enterprise whose annual gross volume of sales made or business done is less than \$625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(b) Except as otherwise provided in sections 177.21 to 177.35, every large employer must pay each employee wages at a rate of at least \$5.15 an hour beginning September 1, 1997, and at a rate of at least \$6.15 an hour beginning August 1, 2005. Every small employer must pay each employee at a rate of at least \$4.90 an hour beginning January 1, 1998, and at a rate of at least \$5.25 an hour beginning August 1, 2005.

(c) Notwithstanding paragraph (b), during the first 90 consecutive days of employment, an employer may pay an employee under the age of 20 years a wage of \$4.90 an hour. No employer may take any action to displace any employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the wage authorized in this paragraph.

[For text of subds 2 to 5, see M.S.2004]

History: 2005 c 44 s 1

177.255 PAYROLL CARD ACCOUNTS.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Payroll card" means a card issued to an employee by an employer or other payroll card issuer to access funds from the employee's employee payroll card account.

(b) "Payroll card account" means an agreement providing that an employer pays each participating employee's wages by making an electronic fund transfer to an account, and participating employees receive a payroll card to access their funds.

(c) "Payroll card issuer" means an employer that issues a payroll card to an employee or a bank or other entity that issues a payroll card to an employee on behalf of the employer.

(d) "Offers a payroll card" includes both the direct offers by the employer and the employer distribution to employees of material describing a payroll card program prepared by a payroll card issuer other than the employer.

(e) "Free" means no fee is deducted from an employee's payroll card account or charged to the employee by the employer or the payroll card issuer.

(f) "Fee" means any and all fees, charges, surcharges, or costs.

Subd. 2. **Filing.** A payroll card issuer must file with the commissioner a notice containing:

- (1) the entity's true name;
- (2) any other names under which the entity conducts business;
- (3) the entity's address, which may not be a post office box; and
- (4) the entity's telephone number.

Subd. 3. **Ownership of wages.** Wages paid by electronic funds transferred to an employee's payroll card account must be owned by the employee.

Subd. 4. **Availability of wages.** An employee who chooses to be paid wages by electronic fund transfer to a payroll card account must be permitted to withdraw by a free transaction from the employee's payroll card account, an amount up to and including the total amount of the employee's entire net pay, as stated on the employee's earnings statement. The free transaction must be available to the employee on and after the employee's regular payday.

Subd. 5. **Written disclosure.** When offering an employee the option of being paid wages by electronic fund transfer to a payroll card account, the employer shall provide to the employee written disclosure in plain language of all the employee's wage payment options. The written disclosure shall state the terms and conditions of the payroll card account option, including, but not limited to, the requirements set forth in this section and a complete itemized list of all fees that may be deducted from the employee's payroll card account by the employer or card issuer. The disclosure must also state that third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer or issuers. For fees that may be deducted or charged by the employer or payroll card issuer, the dollar amount of each fee must be stated. A copy of the written disclosure must be provided to the employee.

Subd. 6. **Written consent.** The employer may initiate payment of wages to an employee by electronic fund transfer to a payroll card account only after the employee has voluntarily consented in writing to that method of payment. Consent to payment of wages by electronic fund transfer to a payroll card account shall not be a condition of hire or of continued employment. The written consent signed by the employee must include the terms and conditions of the payroll card account option as provided in subdivision 5. A copy of the signed written consent must be provided to the employee and be retained by the employer.

Subd. 7. **Transactions; statements; fees.** The employer shall provide to the employee, upon the employee's written or oral request, one free transaction history each month that includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account.

Subd. 8. **No link to credit.** The payroll card or payroll card account shall not be linked to any form of credit including, but not limited to, a loan against future pay or a cash advance on future pay.

Subd. 9. **Personal information.** Unless the employee consents in writing to the use, information generated by the employee's possession or use of a payroll card or payroll card account may only be used to process transactions and administer the payroll card and the payroll card account.

Subd. 10. **Languages other than English.** An employer who offers a payroll card account option to an employee using materials in a language other than English, shall provide the written disclosure and written consent required by subdivisions 5 and 6, and all payroll card account agreements in that other language.

Subd. 11. **Change of wage payment method.** An employee who is being paid wages by electronic fund transfer to a payroll card account may request to be paid wages by another method that is allowed by law. Upon the employee's request to change the wage payment method, the employer shall provide a form on which the employee shall indicate the change. The employer shall, within 14 days of the employee's request, begin payment by a different allowable method.

Subd. 12. **Limitation on employer fees.** An employer may not charge an employee initiation, participation, loading, or other fees to receive wages payable in an electronic fund transfer to a payroll card account.

Subd. 13. **Prohibited deductions and charges.** Fees imposed by the employer or payroll card issuer that were not disclosed to the employee shall not be deducted from the employee's payroll card account or charged to the employee. Inactivity or dormancy fees shall not be deducted from an employee's payroll card account or charged to the employee.

Subd. 14. **Violations; penalty.** A violation of this section is subject to the penalty provided in section 177.32, subdivision 1.

History: 2005 c 158 s 2

NOTE: This section, as added by Laws 2005, chapter 158, section 2, expires May 31, 2007. Laws 2005, chapter 158, section 4.