Know your rights on overtime and gratuities: General information about wage theft

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Labor Standards Division

DEPARTMENT OF LABOR AND INDUSTRY

Labor standards, wage and hour agencies in Minnesota

- Minnesota Department of Labor and Industry, Labor Standards
  - 651-284-5075
- U.S. Department of Labor, Wage and Hour Division
  - 612-370-3341
- Minnesota Attorney General's Office
  - 651-296-3353
- St. Paul, Labor Standards Enforcement and Education Division
  - 651-266-8900
- Minneapolis, Labor Standards Enforcement Division
  - 612-673-3012

Labor and Industry business areas

- Apprenticeship Minnesota
- Youth Skills Training
- Construction Codes and Licensing Division
- Labor Standards
- Minnesota OSHA (MNOSHA) Compliance
- MNOSHA Workplace Safety Consultation
- Projects and planning
- Workers' Compensation Division

Labor Standards Division

- Ensures workers are paid fairly, enforce workplace rights and help prevent employment law violations.
- Provide guidance on wage and hour issues, including earned sick and safe time, child labor, overtime, pregnancy and parental rights, retaliation, worker misclassification and more.

Think about it

How many lakes does Minnesota have?

Agenda

- ✓MN Labor Standards Overview
- ✓Sample Cases
- ✓Q&A
- ✓Resources

What is wage theft?

When an employer avoids paying or fails to pay wages earned by its employees, it is wage theft.

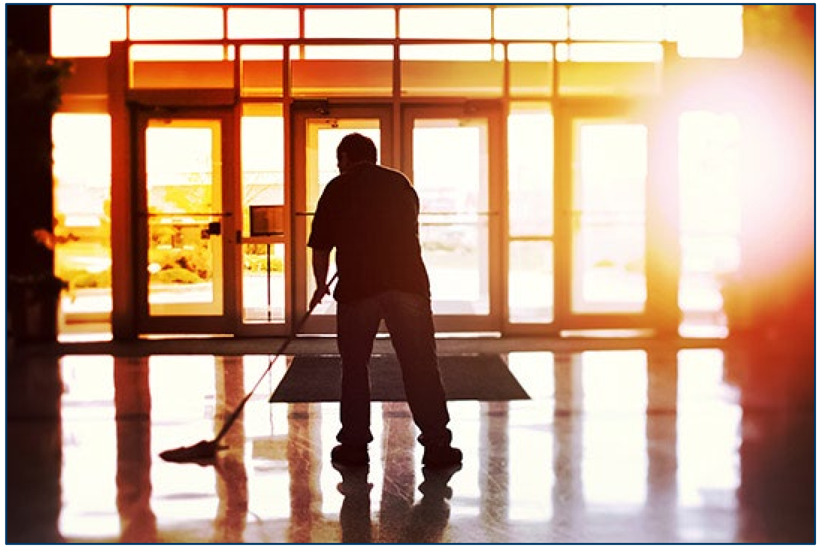
When an employee experiences:

- Being paid less than minimum wage
- not being paid overtime
- required tip sharing
- unpaid wages or illegal deductions from wages
- Being required to work off-the clock
- Being misclassified

Minnesota FLSA: Who is an employee?

The Minnesota FLSA, includes workers' rights to minimum wage, overtime and other workplace protections, contains exemptions for more than 20 types of workers, including:

- executive, administrative and professional employees
- Independent contractors
- nonprofit volunteers
- police and firefighters, elected officials
- seasonal fair, carnival and ski facility workers (overtime exempt only)
- clergy working in schools, hospitals or nonprofits operated by a church or religious order
- certain agricultural workers, if paid on a salary basis



Think about it (1 of 5)

Classifying a worker as an independent contractor is always legal as long as the worker agrees to it.

True

False

Independent contractor misclassification

Misclassification definition

The practice of labeling workers as independent contractors instead of employees in order to avoid certain legal obligations, such as worker's compensation, tax obligations, and fair labor standards.

Misclassification of workers

- Independent contractors versus employees
- Misclassification can lead to fines and legal consequences
- DLI offers tools to help determine classification

State law: Hours worked

The minimum wage must be paid for all hours worked.

Hours worked include:

- training time
- call time
- cleaning time
- waiting time
- travel time

Minnesota minimum wage (2026)

Large and small employers: $11.41/hour.

90-day training wage (under 20 years of age): $9.31/hour

St. Paul ($14.25-$16.37) and Minneapolis ($16.37) have minimum wage ordinances that require a higher rate of pay.

The state minimum wage is higher than the federal minimum wage ($7.50). Employees must be paid the higher applicable minimum wage

Think about it (2 of 5)

Amy works at a restaurant and is told she must share 20% of her tips with bussers at the end of every shift. She is uncomfortable but thinks it is normal.

Is this a potential violation?

Yes

No

Tips

- Tips cannot be counted toward minimum wage payments; employees must receive minimum wage plus tips.
- Employers cannot require tip pooling or sharing unless direct service employees agree, such as for banquets or shared tips among shift workers.
- Employers may store tips and disburse them, report tips for tax purposes, and must pay the full amount of tips received via credit card or e-payment (effective Aug. 1, 2024, without deductions for swipe fees).
- Gratuities paid via credit cards or electronic methods must be given to employees in the next pay period.

Think about it (3 of 5)

Your workplace has a policy that says: “Overtime must be approved before being worked. Hours worked beyond the authorized limit will not be paid.” You worked 50 hours this week because the job required it, but you did not receive pre-approval. Your employer says they do not have to pay the overtime premium for the extra hours. Is that allowed?

Yes

No

Overtime rules

Minnesota law: Over 48 hours

- The Minnesota Fair Labor Standards Act requires employers to pay overtime for all hours worked over 48 per workweek, unless the employee is exempt under Minnesota Statutes 177.23, subdivision 7.

Federal law: Over 40 hours

- The federal Fair Labor Standards Act requires most employers to pay overtime for all hours worked in excess of 40 per workweek.

Overtime is

1.5x regular rate

Keep accurate records of employees' hours worked

Think about it (4 of 5)

If an employer-owned cell phone is dropped by the employee it is assigned to, can the employer deduct the cost to repair the broken screen from the employee’s paycheck?

Yes

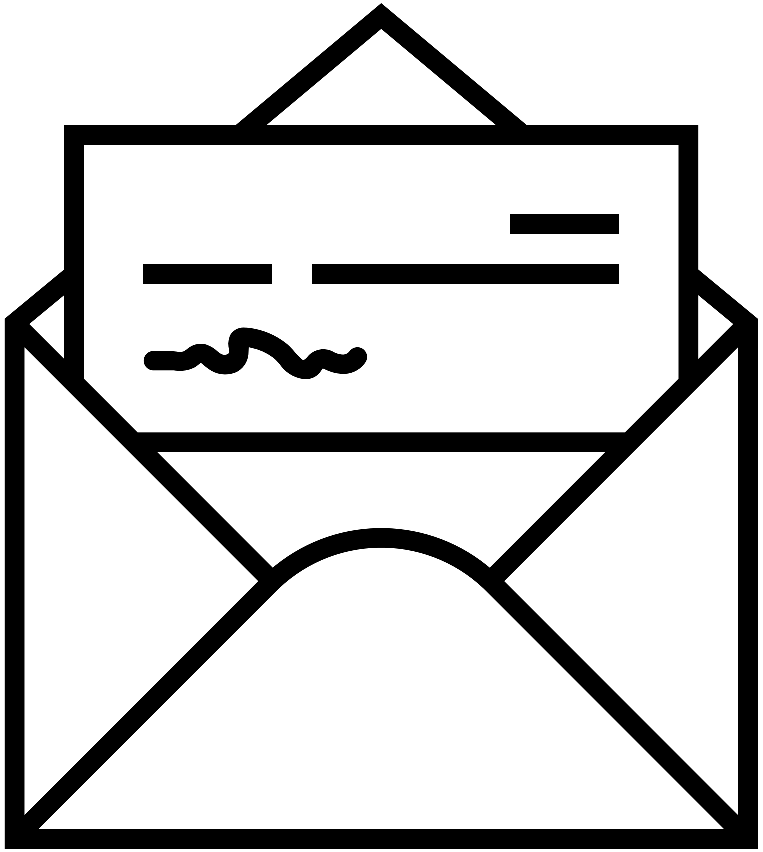
No

Deductions from wages

- Insurance payments, union dues, retirement plans, organizations, PAC or savings plan contributions
- Up to $50 for uniforms, equipment
- Consumables and travel expenses
- Cannot bring an employee’s wages below applicable minimum wage unless
  - Lodging credit rule
  - Meal credit rule
- Must be voluntarily authorized in writing in advance, or ordered by a court

Final wages upon separation of employment

- Employees **terminated, discharged or fired** are due all wages and commissions within 24 hours of a written demand for payment.
- For employees who **voluntarily leave employment**, wages and commissions are due on the next regularly scheduled payday. If the payday is within five days of the last day of work, the employer has up to 20 days to make final payment.
- **Penalties:** The employer may be liable to pay their former employee's average daily earnings for up to 15 days if the employer is late paying wages.



Posters, notices and recordkeeping requirements

- Employee notices
- Posters
- Earning statements
- Recordkeeping

Required notices (all employers)

- ESST
- Nursing Mothers, Lactating employees, and Pregnancy Accommodations
- Employee wage notice
- Paid Leave
- Visit dli.mn.gov/notices

Employee wage notice

The employee notice must include details about:

- exemptions from wage and hour laws;
- pay period length, scheduled paydays;
- the first payment date;
- It must also specify the rate(s) of pay;
- provisions for PTO;
- permissible deductions;
- employer's legal and operating names; and
- contact information including physical and mailing addresses and telephone number.

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Employee notice

1. Employee:	Address:
Phone number:	Email address:
Date employment began:	
2. Legal name of employer:	Main office/principal place of business address:
Phone number:	Email address:
Operating name of employer (if different):	
Mailing address (if different):	
3. Employment status (exempt or non-exempt):	
☐ Employee is exempt from: ☐minimum wage ☐overtime ☐other provisions of Minnesota Statutes 177	
Legal basis for exemption:	
☐ Employee is non-exempt (entitled to overtime, minimum wage, other protections under Minn. Stat. 177)	
4. Rate or rates of pay	
Paid by: Hour☐ Shift☐ Day☐ Week☐ Salary☐ Piece☐ Commission☐ Other method☐	

Required posters (all employers)

- Age discrimination
- Employer-sponsored meetings or communications
- Minimum-wage rates
- Safety and health protections on the job
- Unemployed?
- Workers’ compensation
- Paid Leave
- *50+ employees: Veterans benefits and services
- Visit https://www.dli.mn.gov/posters

Think about it (5 of 5)

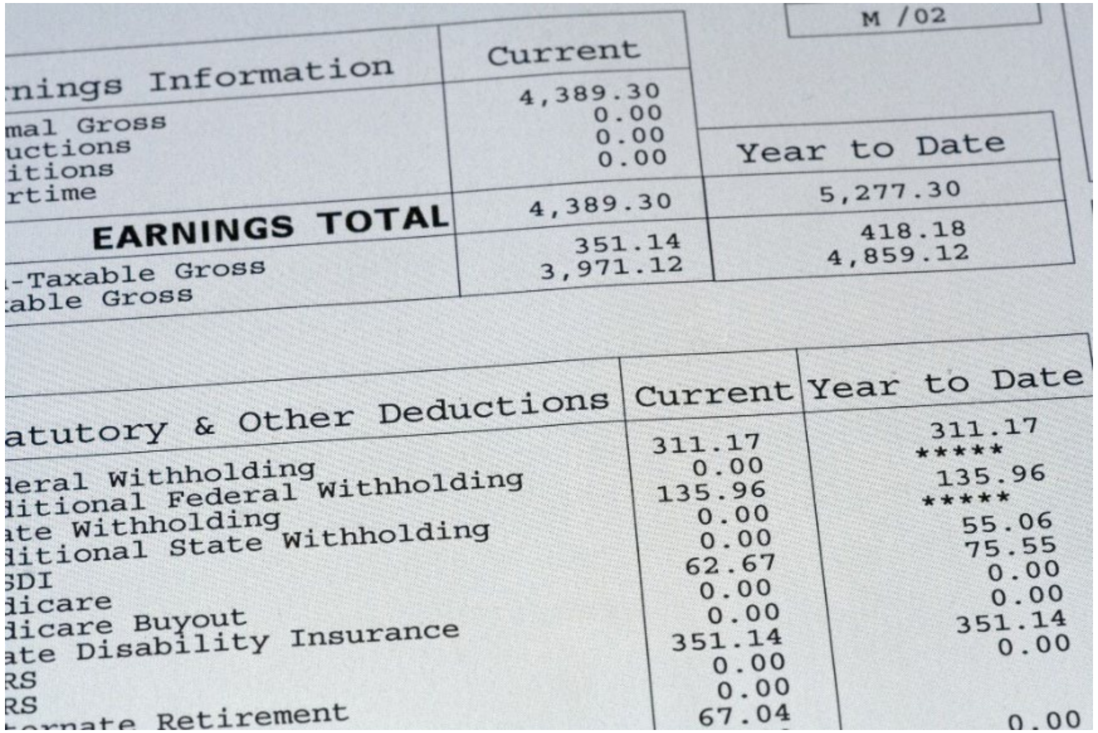
Deductions required to be reported on an earnings statement may include union dues, parking charges and an employee’s paid leave contribution.

True

False

Earnings statement requirements

- Name of the employee
- Total hours worked by the employee in the pay period for nonexempt employees
- Total amount of gross pay earned by the employee in the pay period
- Net amount of pay after all deductions are made
- List of deductions made from the employee's pay
- Date pay period ended
- Employer's legal and operating name



Recordkeeping

Employers must maintain records of:

- Employees’ names, addresses, occupations, pay rates, wages paid, hours worked.
- Employers must keep copies of employee earnings statements for three years from the time they are issued.
- These records must be available for inspection upon request from DLI and stored either on-site or in a manner allowing compliance within 72 hours.
- Videos: https://www.dli.mn.gov/labor-standards-videos

Retaliation

Retaliation happens when an employer (owner, manager or supervisor) either threatens to or takes action against an employee for reporting or threatening to report concerns regarding the employee's labor rights.

Learn more at dli.mn.gov/retaliation

Example:

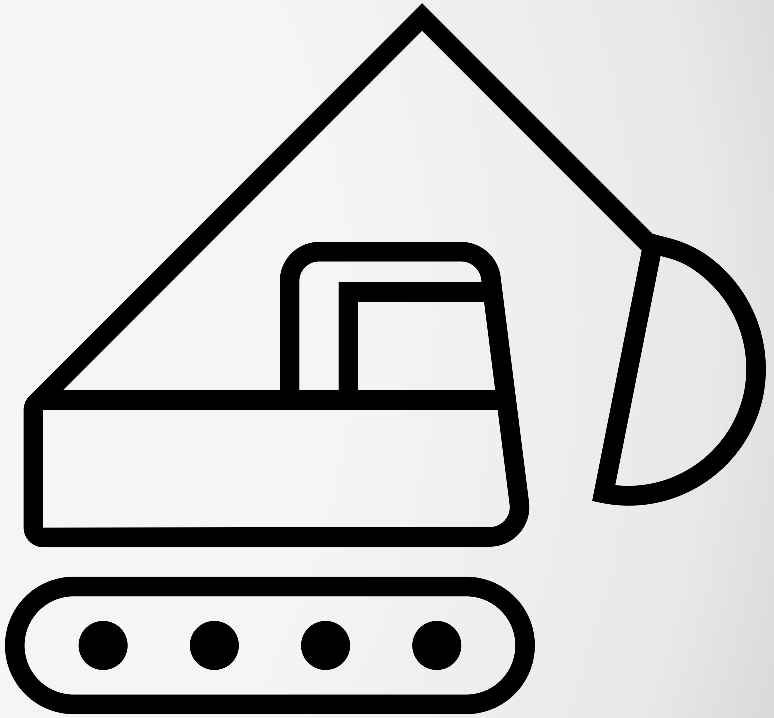
- An employee makes a complaint to their supervisor regarding an overtime payment. In response, the employer reduces their scheduled hours the following week.

Protecting yourself from wage theft

- Stay informed about changes to state and federal labor laws
- Keep copies of your workplace policies and procedures
- Track all hours you work
- Review earnings statements
- Contact DLI if you have questions or need help

Sample case #1 — Final wages

- Employee terminated without pay $19,117
- Employee’s pay was reduced by 50% six months before termination without change notice
- Claim increased to $51,843.76
- Employer paid in full, and committed to comply with wage notice laws

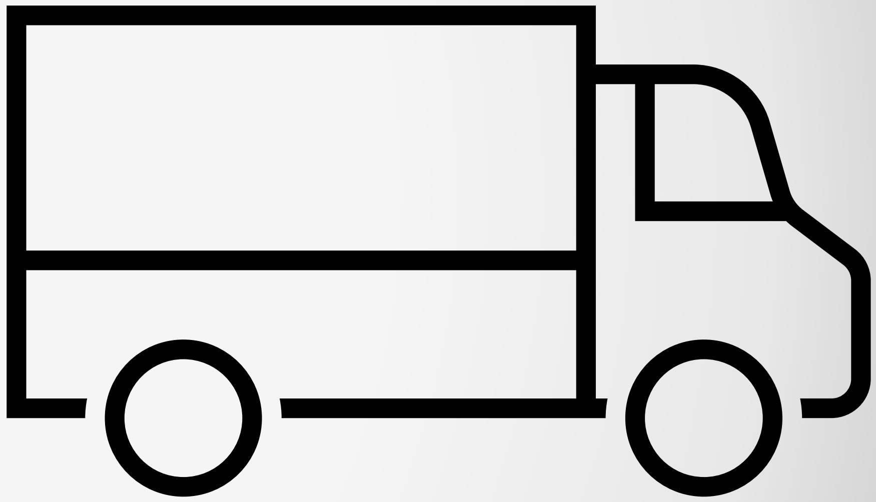


Sample case #2 — Misclassification

- Employee contacted Labor Standards to report that their employer was reclassifying all workers as employees
- Employee did not agree and was terminated
- Investigator sought 5 days of back wages
- Worker received $855.37

Sample case #3 — Unpaid training

- Worker contacted Labor Standards stating they had 39 unpaid hours of mandatory training for a hauling company
- After investigation, employer agreed to pay for all hours of training at state minimum wage.
- Worker received $444.99



Learn more

- Stay up to date with the Labor Standards by signing up for the "Wage and Hour Bulletin."
- To sign up, visit dli.mn.gov/bulletin or scan the QR code.
- Contact Labor Standards at 651-284-5075 or dli.laborstandards@state.mn.us.

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Wage and Hour Bulletin

Thank you for your participation

Scan the QR code or visit the survey page to submit the survey form.

Upcoming webinars

Aug. 4 and Aug. 13: National Breastfeeding Month: State and federal workplace protections of pregnant and nursing parents and programs to assist and recognize supportive employer practices

Sept. 10: Working while learning: What to know about youth employment during the school year

To register, visit dli.mn.gov/events.

Thank you

Contact Labor Standards at:

651-284-5075

dli.laborstandards@state.mn.us

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