

Wage theft questions and answers

1. Will the Department of Labor and Industry (DLI) have a grace period to allow employers to come into compliance?

DLI's primary focus is on providing employers with the information and assistance they need to understand and implement the requirements of the law. DLI will continue to make itself available to all employers through seminars, by phone, by email, and through its website and newsletter. DLI recognizes the notice requirements in the law are new and it takes time for employers to adjust to a new practice.

2. Does an employer need to state on an earnings statement whether an employee is "exempt" or "non-exempt"?

The Wage Theft Prevention Act does not require an employer to state on the earnings statement whether an employee is "exempt" or "non-exempt." Employers are required to state on the earnings statement an employee's "rate or rates of pay and the basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other method."

In contrast, employers are required to include on the written notice provided to an employee at the start of employment the employee's employment status and whether the employee is exempt from minimum wage, overtime and other provisions of Minnesota Statutes, Chapter 177, and on what basis.

3. What does "on what basis" mean in Minn. Stat. 181.032(d)(4)?

"On what basis" means the employer must include in the written notice provided to an employee the legal basis for the exemption from minimum wage, overtime and other provisions of Minn. Stat., Chapter 177.

4. Can an employer meet employee notice obligations by providing or referring to a collective bargaining agreement, handbook or policy?

The initial written notice does not need to be provided by the employer in a specific format or on a specific form. In fact, the reference to and provision of an applicable collective bargaining agreement, policy or handbook may be used to satisfy the information required in the initial employee notice or written change notice if the contract, policy or handbook being provided includes enough specifics for the employee to determine the information required to be in the notice as applied to them. Here are a few examples of this in practice:

- If a written initial notice refers to a paid time off (PTO) accrual policy and that policy is made available to an employee, that action will satisfy the notice requirement related to time-off accruals and terms of use if the employee is also informed of where they fall on the accrual schedule. Many employers are meeting this obligation by including a link on the written notice to the accrual policy and also indicating that as of a certain date, the employee's recognized length of service for vacation accrual is "X" number of years. Change notifications are then only required if the accrual policy is changed and the change affects the employee's accrual.
- If a written initial notice refers to a collective bargaining agreement and that agreement is made available to an employee, that action may satisfy a number of notice requirements. This will depend on the coverage of the collective bargaining agreement. The department is aware of some employers that are using references to a collective bargaining agreement to satisfy the notice requirements related to wages, time-off accruals and use, and information about paydays For wages, the notice could reference the applicable sections of the collective bargaining agreement that outlines pay and informs the employee of their specific classification, step or lane. This would allow the employee to look at the collective bargaining agreement and determine their wage and the circumstances of advancement on the schedule.

5. If an employer provides information about future changes in an initial written notice or written change notice, will that satisfy its obligation to notify an employee of those changes prior to the date the future change takes effect?

Yes, providing a schedule of planned wage changes, or providing a schedule of vacation, sick leave or paid time off (PTO) accrual, in an initial notice or change notice satisfies the obligation to notify the employee of those changes prior to the date the change takes effect. Here are a few examples of this in practice:

- A collective bargaining agreement provides for a cost of living increase every year on July 1 and a step advancement every year on the employee's anniversary date. An employer will not have to issue a change notice on July 1 or on the employee's anniversary date if the initial notice provided to the employee identifies their classification and step and, based on that information, the employee can determine what their new rate of pay will be on July 1 and their anniversary date by looking at the provided collective bargaining agreement.
- A PTO policy provides for PTO accrual based on years of service with increases occurring on the employee's anniversary date. An employer will not have to issue a change notice on each anniversary date if the initial notice provided to the employee identifies the level of vacation accrual and the employee can determine what the new accrual will be on their anniversary date by looking at the provided policy.
- An employer provides a nighttime or weekend pay differential of \$2 an hour. An employer will not have to issue a change notice when an employee works a nighttime or weekend shift if the initial notice indicated the \$2 an hour differential will apply when the employee works nighttime or weekend shifts.

6. Does the employer need to provide written change notices in the language requested by the employee?

Yes, all changes to the information required to be included in the written notice should be provided in English and in the language requested by the employee prior to the date the changes take effect.

7. Is a company based in Minnesota required to comply with the Wage Theft Prevention Act for employees working outside of Minnesota?

Employment covered by the wage and hour provisions of Minn. Stat., Chapter 181 or 177, would be covered by the Wage Theft Prevention Act.

8. Does the complete written notice need to be given again any time there is a change to specific information included in the initial notice?

Only the changes to the information required in the written notice need to be provided to the employee in writing prior to the changes taking effect. The written change notice must be provided in English as well the language requested by the employee, if any. If the employee has not requested the written notice be provided in a language in addition to English, then the changes to the information in the written notice need only be provided in English. Unlike the initial notice, employers are not required to have employees sign change notices.

9. Are employers required to provide employees who were already in an employment relationship July 1, 2019, with the written notice the wage theft law requires to be provided at the start of employment?

The Wage Theft Prevention Act only requires employers to provide an initial written notice to employees at the start of their employment. However, it requires employers to provide employees with a written change notice any time there is a change to the information required in the written notice. The change notice must be provided prior to the date the changes take effect. Change notices do not need to be signed by employees.

10. Are employers required to provide a change notice to employees each time their rate of pay changes?

Changes to the employee's rate of pay identified on a written notice would require a written change notice. However, providing a schedule of planned wage changes, or providing a schedule of vacation, sick leave or PTO accrual, in an initial notice or change notice satisfies the obligation to notify the employee of those changes prior to the date the change takes effect. See also the answer to question 5 above.

11. Should management employees be given the written notice required by the Wage Theft Prevention Act or would they be excluded under the executive/professional/administrative employee designation? Who is covered by these requirements, which types of "employees"?

The Wage Theft Prevention Act requires that employers provide the written notice to all employees.

12. When would a new or revised written notice be required?

The Wage Theft Prevention Act requires employers to provide an initial written notice to employees at the start of their employment. It further requires employers to provide employees with a written change notice any time there is a change to the information required in the written notice. The change notice must be provided prior to the date the changes take effect. Change notices do not need to be signed by employees. See also the answers to questions 5 and 10 above.

13. Will the Department of Labor and Industry be issuing a written notice template for employers to use? If so, when will that be available?

Yes, DLI has prepared an example written employee notice and it is available on the DLI website. The example written employee notice includes required text in the 13 most common languages spoken in Minnesota, which informs employees that they may request, by indicating on the form, the written notice be provided in a particular language. This text in the 13 languages must be included with the written notice whether the employer uses the example written notice prepared by the department or uses a written notice it has prepared.

14. Can the written notice provided by the employer be given to employees electronically? Can the employee sign the notice electronically? If so, what level of electronic signature is required? Is it the standard under Minn. Stat. section 325L?

Yes, employers may provide the written notice to employees electronically. The written notice must be provided in English as well as the language requested by the employee, if any. An electronic signature, as defined in Minn. Stat. section 325L.02, acknowledging receipt of the written notice satisfies the employee signature requirement. If the written notice is provided to employees electronically, the employer must provide a means by which the employee is able to secure a copy of the written notice, such as a printed paper copy or a downloaded copy on a personal computer, laptop, tablet or mobile device.

15. Is emailing the initial written notice to an employee sufficient to meet the signature requirement?

No, the Wage Theft Prevention Act requires the written notice be signed by an employee acknowledging receipt of the written notice.

16. What are the requirements for keeping "personnel policies provided to the employee, including date the policies were given to the employee and a brief description of the policies"?

This is a new recordkeeping requirement for employers. It requires employers to keep a list of the personnel policies provided to an employee, including the date the policies were given to the employee and a brief description of the policies. This applies to all employees, not just new employees. Records must be kept by an employer for at least three years.

17. For the responsible contractor requirements, is the three-year look-back retroactive prior to this law or just for violations found on or after July 1, 2019?

At the time a contractor is required to verify its compliance under Minn. Stat. section 16C.285, a contractor is required to verify it has not violated any of the sections listed in Minn. Stat. section 16C.285, subdivision 3 (2). When the amendments to Minn. Stat. section 16C.285, subd. 3 (2) went into effect July 1, 2019, contractors became required to verify they have not violated the newly added sections (Minn. Stat. sections 181.03 and 181.101), in addition to the sections previously listed in the law, during the three-year period before submitting the verification.

18. What should an employer list for the "number of days in the pay period" on the written notice if the number of days varies? For example, if the employer pay periods are the first through the 15th and the 15th through the end of the month?

The employer should indicate that the number of days in the pay period varies from 13 to 16 depending on the month and the regularly scheduled paydays are the 15th and last day of each month.

19. What is meant by "allowances claimed pursuant to permitted meals and lodging"? Does this include expense reimbursements to employees for meals and lodging?

No, this is not a reference to expense reimbursements. The allowances, for purposes of the statement of earnings and written notice, are required if an employer is crediting a meal or lodging allowance toward the wages owed an employee pursuant to Minnesota Rules 5200.0060 or 5200.0070.

20. Regarding sharing of information to employees and licensing agencies: When is this applicable? What are some typical situations under which an "order to comply" would be issued?

DLI issues orders to comply when an employer is found to have violated one or more of the laws under its enforcement authority. These laws include: minimum wage; overtime; recordkeeping; prevailing wage; failure to pay wages, salaries, commissions or gratuities; deductions from wages; tip sharing; nursing mothers; leave and accommodations; and child labor.

21. What is meant by "employment status" in the context of the written employee notice?

In the written employee notice, an employer is required to state an employee's employment status. To meet this requirement, an employer must state whether an employee is covered by (non-exempt) or not covered by (exempt) minimum wage, overtime and other provisions of Minn. Stat. Chapter 177 and on what basis they are covered (non-exempt) or not covered (exempt) by one or more of those provisions. See also the answers to questions 2 and 3.22.

22. Can the employer's contact information be included on the second page of an employee's check stub? This second page is called a continuation form and is used by some payroll companies.

Yes, the contact information can be on the second page of an employee's check stub provided the page contains the employer's physical address, mailing address and telephone number, as required by the Wage Theft Prevention Act, and is always provided as part of the statement of earnings at the end of each pay period.

23. Regarding "intent to defraud" in the criminal wage theft provision: Is there any definition or something similar that explains what this means in a practical or plain-language sense? Are there any examples?

The Department of Labor and Industry is not the enforcement authority for the criminal provisions of the Wage Theft Prevention Act. The criminal wage theft provisions would be investigated by law enforcement agencies with criminal law enforcement authority and prosecuted by city attorneys, county attorneys or the state attorney general's office when requested by a county attorney.

24. Who specifically in the company would be convicted of the felony under this law?

The Department of Labor and Industry is not the enforcement authority for the criminal provisions of the Wage Theft Prevention Act. The criminal wage theft provisions would be investigated by law enforcement agencies with criminal law enforcement authority and prosecuted by city attorneys, county attorneys and the state attorney general's office when requested by a county attorney.

25. What is the threshold of a new hire for purposes of the written notice requirement? Are seasonal employees included? If an employee works seasonally, are they a new hire when they return?

Employers are required to provide the written notice to all employees at the start of employment, which includes seasonal employees. If a seasonal employee's employment ends and the employee is hired again at the beginning of the next season, the employee must receive the written notice at the start of employment for the next season.

26. Does the employer need to provide an employee with new pay information every time they increase an employee's pay? If they haven't given the employee new pay information (or if they have but haven't received a signed copy from the employee) is the employer not allowed to increase the employee's pay?

The employer must provide an employee in writing the change in the employee's rate of pay each time the employee's rate of pay changes, in English and the language requested by the employee, if any. The law states the employee needs to receive in writing a notice of the change prior to the change taking effect. There is no requirement that the employee sign the written change notice. See also the answers to questions 5 and 10.

27. For the purposes of maintaining records and having them available for inspection, can the employer maintain the records electronically and provide DLI with a link to access them upon demand of inspection?

Employers may keep records electronically as long as they are readily available for inspection by DLI upon demand and DLI is able to secure copies of the records.

28. When employees request the written notice in a language other than English, what information needs to be provided in the requested language? What is the expected timeframe for this information to be translated and provided to the employees?

If an employee requests the written notice in a language other than English, the employer must provide the written notice, including all required information, to the employee in that language. The written notice example prepared by DLI has been translated into the 13 most commonly spoken languages in Minnesota and is available on the DLI webpage for use by employers. DLI will work to assist employers whose employees request the written notice be provided in a language other than the 13 languages already translated by DLI.

The law does not establish a time by which the written notice must be provided to an employee in the language requested by the employee. However, providing the written notice in the requested language should be accomplished as close as possible to the start of employment.

29. Can an employer provide links on the written notice template that point to policies, such as the policies around time-off plans or payroll schedules, instead of including that information on the employee notice?

Yes, the initial written notice does not need to be provided by the employer in a specific format or on a specific form. In fact, the reference to and provision of an applicable collective bargaining agreement, policy or handbook may be used to satisfy the information required in the employee notice or change notice if the contract, policy or handbook being provided includes enough specifics for the employee to determine the information required to be in the notice as applied to them. See also the answer to question 4.

30. What is considered the "start" of employment for purposes of providing the written notice to employees? Is this upon "hire"?

The "start" of employment is when the employee begins performing work for the employer. The written notice provision of the law does not use the term "hire." An employer may give the written notice before the start of employment.

31. In consideration of the broad definition of "employer" with respect to this law, will DLI consider professional employer organizations and payroll processors subject to the law's requirements (especially the recordkeeping requirements)?

All employers are subject to the law's requirement. Employers will be held responsible for compliance with the law's requirements for each of their employees.

32. Is there someone at DLI we can partner with or use as a resource to determine if any of our existing processes meet the requirements? Or, perhaps, tweak existing processes to be in compliance?

The resources provided on the DLI website, including these questions and answers, are intended to provide needed guidance to employers to allow them to assess their existing practices and bring them into compliance with the Wage Theft Prevention Act requirements. If an employer is seeking a legal review of its existing practices and legal advice about whether they meet the requirements of the law, the employer may wish to consult with a private attorney experienced in labor and employment law in Minnesota.

33. What is the consequence to employers if employees receive changes to the employee written notice after the changes have gone into effect?

This will depend on the facts of the situation and the consequences for employees who were not provided the written notice before the changes went into effect. Employers who violate the employee notice and recordkeeping requirements may be issued a Commissioner Order to Comply that imposes remedies provided for in Minn. Stat. section 177.27 and civil recordkeeping penalties. Employees may also bring a private civil action seeking similar remedies and penalties.

34. The employee notice must include "a list of deductions that may be made from the employee's pay." How comprehensive does this information need to be? Does the exact dollar amount of the deductions need to be listed?

The written notice should identify all of the deductions that may be made by the employer from an employee's pay. The amount of each deduction does not need to be indicated in the written notice. A list of deductions, including the amount of the deduction, is required in the statement of earnings that must be provided to the employee by the employer at the end of each pay period.

35. Is there a minimum business or employer size that needs to comply with the laws?

No, all employers must comply with the Wage Theft Prevention Act.

36. If there is a joint employer, should one or both be listed on the written notice?

All employers are subject to the law's written employee notice requirements and employers, including joint employers, will be held responsible for compliance with the law's requirements for each of their employees, including those employed jointly. The Wage Theft Prevention Act requires specific information about an employee's employer be provided on the written notice and the earnings statement. If two employers jointly employ an employee, each employer is responsible for providing a written notice to the employee that meets the requirements of the law. The law does not preclude joint employers from meeting this requirement by providing the employee with a joint written notice that provides the required information, including the required information about both employers.

37. If a company is based outside of Minnesota but has employees who occasionally work in the state (for up to a few months at a time) what are the employee notice requirements?

Employment covered by the wage and hour provisions of Minn. Stat., Chapters 181 or 177, would be covered by the Wage Theft Prevention Act. Application of the law would depend on the application of multiple factors and would be highly fact-dependent.

38. Do the recordkeeping requirements only pertain to those considered employees under the Minnesota Fair Labor Standards Act (MFLSA) or to others as well?

Under Minn. Stat. section 177.30, the recordkeeping requirements apply to all employers subject to MFLSA and the Minnesota Prevailing Wage Act. In addition, the recordkeeping requirement in Minn. Stat. section 181.032 applies to all employers and requires employers to keep a copy of the written notice provided to each employee and any written changes.

39. Do the policies required to be kept and briefly summarized include state and federal laws, like Minnesota parental leave, the federal Family and Medical Leave Act (FMLA), etc.?

The employer must maintain a list of all personnel policies provided by the employer to the employee, with the date the policy was provided and a brief description of the policy.

40. If a language other than English is requested, what is the timeline or expectation to fulfill that request?

The law does not establish a time by which the written notice must be provided to an employee in the language requested by the employee. However, providing the written notice in the requested language should be accomplished as close as possible to the start of employment. The written notice example prepared by DLI has been translated into the 13 most commonly spoken languages in Minnesota and is available on the DLI webpage for use by employers. A list of reputable translation services for other language translation requests is on the English version of the example employee notice posted on the DLI website.

41. We are an employer in Iowa, but have a few employees in Minnesota. Are we required to follow Minnesota's Wage Theft Prevention Act for these employees? What is the statute citation that addresses this?

Employment covered by the wage and hour provisions of Minn. Stat., Chapters 181 or 177, would be covered by the Wage Theft Prevention Act. Application of the law would depend on the application of multiple factors and would be highly fact-dependent.

42. What is the penalty for not having the translated language on the written notice?

This will depend on the facts of the situation and the consequences for employees. Pursuant to Minn. Stat. section 177.27, subd. 4 and 7, the commissioner may issue an order requiring an employer to comply with the written notice requirements in Minn. Stat. section 181.032, including the requirement that the notice be translated into a requested language. The order may impose the appropriate remedies and penalties included in Minn. Stat. section 177.27, subd. 7. In addition, the commissioner may issue civil penalties to an employer pursuant to Minn. Stat. section 177.30 for failure to maintain records, including the notice provided to each employee as required by Minn. Stat. section 181.032, paragraph (d). This penalty may be up to \$1,000 for each violation and up to \$5,000 for each repeated failure to comply with the law's requirements. Lastly, the employer may be charged with a misdemeanor under Minn. Stat. section 177.32, sub. 1 (3).

43. Is there a specific person who should sign the written employee notice on behalf of the employer or can the employer designate someone to sign on behalf the employer?

The Wage Theft Prevention Act requires that the employee sign the written notice acknowledging receipt. The Wage Theft Prevention Act does not require the employer to sign the written notice.

44. Who should sign the form on behalf of the employer if the written employee notice is being issued to the "top" employee, for example the president, executive director, owner/worker, etc.?

The Wage Theft Prevention Act requires that the employee sign the written notice acknowledging receipt. The Wage Theft Prevention Act does not require the employer to sign the written notice.

45. Minnesota Statutes section 181.032 (e) states the commissioner shall "assist employers with translation of the notice in the languages requested by their employees." What kind of assistance will be provided and how does an employer request such assistance?

The written notice example prepared by DLI has been translated into the 13 most commonly spoken languages in Minnesota and is available on the DLI webpage for use by employers. A list of reputable translation services for other language translation requests is on the English version of the example employee notice posted on the DLI website.

46. Will awarding a discretionary or nondiscretionary bonus to an employee require a written change notification?

A discretionary bonus, for example, an end of the year bonus, would not likely constitute a rate of pay as contemplated by the new notice requirement and is, therefore, not required in the initial written notice and will not require a written change notification. A nondiscretionary bonus, for example, additional wages earned after a certain goal is reached, is required to be identified as a rate of pay in the initial written notice and requires a written change notification if changed.

47. What parts of the law pertain to those exempt from the MFLSA (Minn. Stat., Ch. 177)?

The definition of employee in Minn. Stat. section 177.23, subd. 7, applies to MFLSA. MFLSA definitions are limited in scope. See Minn. Stat. section 177.23, subd. 1. The new notice requirements, changes to the required statement of earnings and changes to payment of wages are in Minn. Stat., Ch. 181. Whether a specific worker is an employee under Minn. Stat., Ch. 181, is a separate analysis that is highly fact-dependent.

48. The law states the earnings statement must include "the total hours worked by the employee in the pay period." Does this mean that simply the number of hours paid must be shown or must the number of hours worked need to be described differently than the hours paid due to PTO or holiday time? In other words, would "80 hours" be acceptable on the earnings statement when the person has earned 80 hours of pay – even if the pay period had an eight-hour holiday, 16 hours of PTO and only 56 hours of time actually worked?

The requirement that an earning statement include "the total number of hours worked by the employee unless exempt from chapter 177" was not affected by the Wage Theft Prevention Act.

49. Does the employer need to show on the earnings statement the number of hours worked even for salaried/MFLSA-exempt employees? Or is showing their earnings as "salary" sufficient?

Minnesota Statutes section 181.032 (b) (4) requires that an earnings statement include "the total number of hours worked by the employee unless exempt from chapter 177." This provision was not affected by the Wage Theft Prevention Act.

50. Are employers on prevailing-wage projects required to provide each employee with the rates or can the employer refer the employees to the posting of the rates instead?

Employees must be provided with a written notice of any changes to the information in the initial written notice, including rates of pay. If the rates of the prevailing-wage project were not included in the initial written notice or a change notice, then the new applicable rates for the prevailing-wage job need to be provided to the employees via a written change notification. The written change notice can be provided in hard copy or electronically.

Simply referring employees to a jobsite posting is not sufficient to meet the initial notice or the change notice requirements. If the employer wants to use a jobsite posting to meet its notice obligations, the jobsite posting, including the prevailing-wage rates that apply to the employee, must be attached to the initial written notice or written change notice. The initial written notice or change notice and the attachments must contain enough specifics for the employee to identify the applicable rate or rates of pay for their job classification(s).

51. The law states an employer must pay all commissions earned by an employee at least once every three months. When are commissions earned?

The law does not define when commissions are earned. This is typically defined in an agreement between the employer and employee. After commissions are earned, they must be paid within three months.

52. If an employer specifically references provisions of a collective bargaining agreement (CBA) or policy in the written notice and delivers a full copy of the referenced document to the employee, and the employee requests the notice be provided in a different language, is the employer obligated to translate the entire CBA or policy or only those portions of the CBA or policy specifically referenced in the notice?

The employer is obligated to translate the portions of the CBA or policy specifically referenced in the notice requirement that are necessary to convey the information statutorily required in the written notice.

Still have a question?

If you didn't find your question answered above, email it to DLI Labor Standards at dli.laborstandards@state.mn.us.