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STATE

Littler on

# Minnesota Employment Law

## COVERAGE

**Scope of Discussion.** This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Minnesota employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

## DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.



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# 1. PRE-HIRE

## 1.1 Classifying Workers: Employees v. Independent Contractors

### 1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see **LITTLER ON CLASSIFYING WORKERS**.

### 1.1(b) *State Guidelines on Classifying Workers*

In Minnesota, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).[5]

The Minnesota Department of Labor and Industry (MDLI) has entered into a partnership with the U.S. Department of Labor (DOL), Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts in order to reduce instances of misclassification of employees as independent contractors.[6]

**Construction Industry. Effective March 1, 2025**, determining whether a construction industry worker is an employee versus independent contractor will be based upon a new 14-factor test that focuses on the time at which the services were provided. The new test requires that any written proposal, contract or change order provide that the business entity controls the means of providing the services and in fact, controls the provision or performance of the services. Further, the contract must be signed and dated by both an authorized representative of the business providing the service and the person for whom the services are provided, and provide for compensation on a commission, or per-job or competitive bid basis, not any other basis.[7]

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[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] Special independent contractor provisions apply for individuals performing public or private sector commercial or residential building construction or improvement services. *See* MINN. STAT. § 181.723. These industry-specific laws are outside the scope of this publication.

[6] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding (MOU) with the MDLI is available at https://www.dol.gov/whd/workers/MOU/mn.pdf, and Amendment No. 1 to the MOU at https://www.dol.gov/whd/workers/MOU/mn_1.pdf.

[7] MINN. STAT. § 181.724 (as amended by H.B. 5247 (Minn. 2024)).

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| **Fair Employment Practices Laws** | Minnesota Department of Human Rights | Hybrid common-law and economic realities test, considering the following factors:<br>1. the hiring party's right to control the manner of and means by which the product is accomplished;<br>2. the skill required to perform the work;<br>3. who provides the instrumentalities and tools;<br>4. where the work is performed;<br>5. the duration of the relationship between the parties, and extent of the hired party's discretion over when and how long to work;<br>6. whether the hiring party has the right to assign the hired party additional projects;<br>7. the method of payment;<br>8. the role the hired party has in the processes of hiring and paying assistants;<br>9. whether the work is part of the regular business of the hiring party;<br>10. whether employee benefits are provided;<br>11. the tax treatment of the hired party;<br>12. how the work relationship is terminated, including whether one or both parties can terminate the relationship, and whether notice and explanation must be provided;<br>13. whether the hired party accrues annual leave;<br>14. whether the hired party accumulates retirement benefits; and<br>15. Social Security taxes paid.[8] |
| **Income Taxes** | Minnesota | Internal Revenue Service (IRS) 20-factor test.[9] |

[8] According to a Minnesota federal court, Minnesota courts use a hybrid common-law and economic realities test, which extends the traditional agency test. *Hanson v. Friends of Minn. Sinfornia*, 181F. Supp. 2d 1003, 1006-07 (D. Minn. 2001) (citation omitted). The Minnesota Human Rights Act does not apply to independent contractors. *Hanson v. Friends of Minn. Sinfonia*, 2004 WL 1244229, at *3 (Minn. Ct. App. June 8, 2004); *see also Hanson*, 181F. Supp. 2d at 1006.

[9] *See Hetland & Assocs. v. Commissioner of Revenue*, 2011 WL 1045457, at **3-4 (Minn. Tax Ct. Mar. 17, 2011); *see also* Minnesota Dep't of Revenue, *Independent Contractor or Employee Withholding Fact Sheet 8* (rev. Sept. 2022), *available at* https://www.revenue.state.mn.us/independent-contractor-or-employee (summarizing the 20 factors and providing case examples and additional guidance on classification). Of the 20 factors, the right of control is the most important. *Hetland & Assocs.*, 2011 WL 1045457, at *4; *see also Peterson v. Commissioner of Revenue*, 2010 WL 4181408, at *3 (Minn. Tax Ct. Oct. 19, 2010) ("Minnesota courts have held that this right to control is the key factor in determining whether an individual is an employee or independent contractor.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | Department of Revenue | |
| **Unemployment Insurance** | Minnesota Department of Employment and Economic Development | The statutory definition of *employment* is service performed by an individual "considered an employee under the common law of employer-employee and not considered an independent contractor."[10]<br><br>To determine whether an individual is an employee or an independent contractor, the Minnesota regulations provide that "five factors must be considered and weighed within a particular set of circumstances," with the following two factors deemed the most important:<br>1. the right or lack of the right to control the means and manner of performance; and<br>2. the right to discharge the worker without incurring liability.<br><br>The other essential factors are:<br>3. the mode of payment;<br>4. furnishing of materials and tools; and<br>5. control over the premises where services are performed.<br><br>Additionally, other factors may be considered if the outcome is inconclusive; the degree of importance may vary depending on the occupation or work situation being considered.[11]<br><br>Minnesota courts have identified the following factors as relevant to determining if there is a right to control:<br>1. whether a continuing relationship exists between the parties; |

Moreover, the determinative right of control is not merely over what is to be done, but primarily over how it is to be done.") (quotation omitted).

[10] MINN. STAT. § 268.035(15)(a)(1); *see also* Unemployment Ins. Minn., *Independent Contractors*, *available at* http://uimn.org/employers/wages-taxes/independent-contractors/index.jsp.

[11] MINN. R. 3315.0555.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | 2. whether there are set working hours; and<br>3. whether individuals have the right to direct the method of performing work or whether they must comply with detailed instructions from the employer.[12] |
| **Wage & Hour Laws** | MDLI, Wage & Hour | Minnesota courts apply the economic realities test from the federal Fair Labor Standards Act (FLSA) to determine if individuals are employees or independent contractors under the Minnesota Fair Labor Standards Act (MFLSA).[13]<br><br>Under the pertinent regulations, while a totality of circumstances, including practices and customs, are considered, the following factors are relevant to whether there is control:<br>1. Authority over individual's assistants, including hiring, pay, and supervision indicates control.<br>2. Compliance with instructions: "control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved."<br>3. Reports: "[c]ontrol is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit."<br>4. Location where the work is performed: "[c]ontrol is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere."<br>5. Personal performance: "[c]ontrol is indicated if the services must be personally rendered to the employing unit." |

[12] *Baindurashvili v. Helpful Hands Transp., Inc.*, 2012 WL 5476150, at *4 (Minn. Ct. App. Nov. 13, 2012); *Builders Commonwealth, Inc. v. Department of Emp't & Economic Dev.*, 814 N.W.2d 49, 57 (Minn. Ct. App. 2012) ("The nature of the relationship of the parties is to be determined from the consequences which the law attaches to their arrangements and conduct rather than the label they might place upon it.") (quoting *Speaks, Inc. v. Jensen,* 243 N.W.2d 142, 144 (Minn. 1976)).

[13] *In re Kokesch*, 411 N.W.2d 559, 562 (Minn. Ct. App. 1987). The economic realities test is not based on common-law concepts, but on six factors: (1) "the degree of the alleged employer's right to control the manner in which the work is to be performed;" (2) "the alleged employee's opportunity for profit or loss depending upon his managerial skill;" (3) "the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;" (4) whether the service requires a special skill; (5) the permanence of the working relationship; and (6) whether the service is an integral part of the alleged employer's business. *In re Kokesch*, 411 N.W.2d at 562 (citing *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 754 (9th Cir. 1979)); *see also McDonald v. JP Marketing Assocs.*, 2007 WL 1114159, at **4-5 n.4 (D. Minn. Apr. 13, 2007).

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | 6. Existence of a continuing relationship is indicative of control.<br>7. Set hours of work are individual of control.<br>8. Training by an experienced employee is indicative of control.<br>9. Amount of time spent on the work: "[c]ontrol is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality."<br>10. Simultaneous contracts: "If an individual works for a number of persons or firms at the same time, lack of control is indicated."<br>11. "The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker."<br>12. Expense reimbursement: "payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker."<br>13. "Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies."[14]<br><br>Other factors considered, in addition to control, include:<br>1. The right to discharge indicates independent contractor status. This right "exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications."<br>2. Availability of services to the general public, if made by an individual on a continuing basis, is indicative of independent contractor status.<br>3. "Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent."<br>4. "Independent contractor status is indicated where an |

[14] MINN. R. 5224.0330.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | individual is in a position to realize a profit or suffer a loss as a result of his or her services."<br>5. Termination rights: "The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment." Whereas, "[i]ndependent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job."<br>6. Substantial investment: "A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status."<br>7. Responsibility: "If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated."<br>8. "Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists."[15]<br><br>Minnesota emphasizes that no one factor is most important; all factors must be considered in determining "whether the worker is economically dependent upon the business to which the worker provides services."[16] |
| **Workers' Compensation** | MDLI, Workers' Compensation | FLSA "economic realities" test.[17]<br><br>For general occupations not specifically delineated in the Minnesota regulations, the factors to be considered are the same as those discussed above for Wage & Hour Laws.[18] |

[15] MINN. R. 5224.0340.

[16] MINN. R. 5200.0221.

[17] The term *employee* is defined as "any person who performs services for another for hire." MINN. STAT. § 176.011. However, covered employment does not apply to "persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83." MINN. STAT. § 176.041.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | The MDLI emphasizes that the following five factors also have been applied by Minnesota courts, in addition to those set forth in the regulations:<br>1. the right to control the means and manner of performance;<br>2. the mode of payment;<br>3. the furnishing of tools and supplies;<br>4. control over the location where the work is performed; and<br>5. the right of discharge.[19] |
| **Workplace Safety** | MDLI, Occupational Safety & Health | While Minnesota has an approved state plan under the federal Occupational Safety and Health Act, there are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. |

## 1.2 Employment Eligibility & Verification Requirements

### 1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

[18] Chapter 5224 of the Minnesota Rules lists specific criteria that must be met for an individual to be considered either an employee or independent contractor for 34 specific occupations, such as nurse, barber, and accountant. For occupations not listed, parts 5224.030 and 5224.0340 of the Minnesota Rules apply. *See* MINN. R. 5224.0320; *see also* Minn. Dep't of Labor and Indus., Workers' Comp., Fact sheet: Workers' compensation Insurance, available at https://www.dli.mn.gov/sites/default/files/pdf/fact_sheet_scf.pdf.

[19] Minn. Dep't of Labor and Indus., Workers' Comp., *Workers' compensation -- Determining independent contractor or employee status* (section on independent contractor for other occupations); *see also Hunter v. Crawford Door Sales*, 501 N.W.2d 623, 624 (Minn. 1993) (discussing the five-factor test used by courts and emphasizing "the rules and prior case law emphasize that it is the right to control the means and manner of performance that is the most significant factor in determining the existence of an employment relationship.") (citations omitted). Note that some administrative courts have continued to apply the five-part test to determine whether an employment relationship exists. *See, e.g.*, *Guevara v. BT-PCE*, No. WC14-5660 (Workers' Comp. Ct. App. July 29, 2014) *available at* https://mn.gov/workcomp-stat/2014/Guevara-07-29-14.html.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[20]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[21] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[22]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

### 1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

#### 1.2(b)(i) *Private Employers*

Minnesota does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Minnesota should follow federal law requirements regarding employment eligibility and verification.

#### 1.2(b)(ii) *State Contractors*

Minnesota requires the use of E-Verify by contract vendors and subcontractors whose contracts exceed $50,000. These covered contractors and subcontractors must certify that, as of the date services will be provided under the contract, the contractor and all subcontractors have implemented or are in the process of implementing use of the federal E-Verify program for verifying the employment eligibility of all newly-hired employees in the United States who will perform work on behalf of the state of Minnesota.[23]
This law only applies to contracts entered into on or after July 22, 2011.

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[20] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[21] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[22] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[23] MINN. STAT. § 16C.075.

## 1.3 Restrictions on Background Screening & Privacy Rights in Hiring

### 1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

#### 1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[24] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

#### 1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Minnesota has enacted a "ban-the-box" law[25] that prohibits employers from inquiring into, considering, or requiring disclosure of an applicant's criminal history or criminal record *until* the employer has selected the applicant for an interview.[26] Because the law applies to all criminal records, it covers arrest records. If there is not an interview, the employer may not inquire, consider, or require disclosure until it makes a conditional offer of employment to the applicant.[27]

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[24] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[25] MINN. STAT. §§ 364.01 *et seq*.; *see also* Minnesota Dep't of Human Rights, *Technical Guide 364.021*, *available at* https://mn.gov/mdhr/assets/Technical%20Guidance%20364.021_tcm1061-213501.pdf.

[26] MINN. STAT. § 364.021.

[27] MINN. STAT. § 364.021.

Employers are not prohibited from notifying applicants that a particular criminal history background will disqualify an individual from employment in a particular position, either due to law or the employer's policy.[28]

**Exceptions.** These "ban-the-box" restrictions do not apply to an employer that has a statutory duty to conduct a criminal background check or otherwise take into consideration a potential employee's criminal history during the hiring process.[29] These restrictions also do not supersede any requirements under law to conduct a criminal history background investigation or to consider criminal history records in hiring for particular types of employment.[30]

### 1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Minnesota has a "ban-the-box" law that applies to all criminal records, including conviction records. For additional information, see **1.3(a)(ii)**.

Additionally, the Minnesota Department of Human Rights takes the position that the use of criminal background information by employers to bar applicants from employment may have an adverse impact on minority groups. Therefore, generally, a conviction record should not be an absolute bar to employment. Employers are urged to consider the recency and job-relatedness of any conviction before making an adverse hiring decision because of a conviction. Employers should advise job applicants that these mitigating factors will be considered.[31]

### 1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

Criminal records that are sealed cannot be disclosed, except pursuant to a court order or statutory authority.[32] A court may seal the following records: (1) certain arrests or criminal proceedings resolved in favor of the individual; (2) records and proceedings stemming from the mistaken identity of the individual; (3) proceedings relating to first time drug offenses that have been dismissed or discharged; and (4) conviction records of certain juveniles who have been prosecuted as adults after discharge.[33]

If the court orders the sealing of proceeding records for certain first-time drug offenses or proceeding records stemming from mistaken identity, the person will not be held guilty of perjury or for giving a false statement if the person fails to acknowledge the proceedings in response to any inquiry.[34] Additionally, an applicant may deny the existence of a minor marijuana conviction that has been expunged.[35]

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[28] MINN. STAT. § 364.021(c).

[29] MINN. STAT. § 364.021(b).

[30] MINN. STAT. § 364.09(g).

[31] Minnesota Dep't of Human Rights, *Technical Guide 364.021*, *available at* https://mn.gov/mdhr/assets/Technical%20Guidance%20364.021_tcm1061-213501.pdf.

[32] MINN. STAT. § 609A.01.

[33] MINN. STAT. § 609A.02.

[34] MINN. STAT. §§ 152.18, 609A.03, 609A.017.

[35] MINN. STAT. §§ 152.18, 609A.03.

### 1.3(a)(v) *State Enforcement, Remedies & Penalties*

Minnesota's "ban-the-box" law does not provide a private cause of action, but is enforced by the Minnesota Commissioner of Human Rights. Employers that violate the provisions are subject to penalties.[36]

### 1.3(b) *Restrictions on Credit Checks*

### 1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

**The Fair Credit Reporting Act (FCRA).** The FCRA[37] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[38] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

**Discrimination Concerns.** While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[39]

### 1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Minnesota has a mini-FCRA law.

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[36] MINN. STAT. § 364.06.

[37] 15 U.S.C. §§ 1681 *et seq*.

[38] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[39] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

 

**Consumer Reports.** In Minnesota, employers may obtain "consumer reports" for employment purposes, if certain procedures are followed. Before obtaining or causing to be prepared a consumer report on an individual for employment purposes, an employer must first clearly and accurately disclose the fact that a consumer report may be obtained or prepared.[40] *Consumer report* refers to a written, oral, or other communication of information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living used for employment purposes.[41] *Employment purposes* means evaluating an individual for hiring, compensation, promotion, reassignment, retention, or with respect to other terms and conditions of employment.[42]

**Investigative Consumer Reports.** As with consumer reports, before obtaining or causing to be prepared an investigative consumer report on an individual for employment purposes, an employer must first clearly and accurately disclose the fact that a consumer report may be obtained or caused to be prepared.[43] However, the disclosure must additionally inform the individual that the report may include information obtained through personal interviews regarding the individual's character, general reputation, personal characteristics, or mode of living.[44]

*Investigative consumer report* means a consumer report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual or with others with whom the individual is acquainted or who may have knowledge concerning the information. However, it does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.[45]

**Required Disclosures.** Disclosures must be provided in writing before any type of consumer report is obtained or caused to be prepared, and must inform the individual of their right to request additional information on the nature of the report.[46] If the employer uses a written application for employment purposes, the disclosure must be included in or accompany the application. The disclosure must include a box that the person may check off and return to receive a copy of the consumer report.[47]

If an applicant requests a copy of the report, the employer must request that the reporting agency provide a copy to the individual. The report must be sent within 24 hours after the employer receives it and must include a statement of the individual's right to dispute and correct any errors and of the procedures federal law. The report must be provided free of charge.[48]

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[40] MINN. STAT. § 13C.02.

[41] MINN. STAT. § 13C.001.

[42] MINN. STAT. § 13C.001.

[43] MINN. STAT. § 13C.02.

[44] MINN. STAT. § 13C.02.

[45] MINN. STAT. § 13C.001.

[46] MINN. STAT. § 13C.02.

[47] MINN. STAT. § 13C.02.

[48] MINN. STAT. § 13C.02.

**Adverse Action.** If an employer denies an individual employment or takes other adverse employment actions based in whole or in part on information contained in a consumer report, the employer must so advise the individual and notify him/her of the right to receive a copy of the report. The employer must also give the individual the name and address of the consumer reporting agency that made the report and notice of the right to dispute and correct any errors and of the procedures under federal law. The report must be provided free of charge.[49]

**Exceptions.** The credit report disclosure and authorization requirements do not apply to: (1) a consumer report to be used for employment purposes for which the individual has not specifically applied; or (2) a consumer report used for an investigation of a current violation of a criminal or civil statute by a current employee or an investigation of employee conduct for which the employer may be liable, until the investigation is completed.[50]

### 1.3(b)(iii) *State Enforcement, Remedies & Penalties*

The credit provisions may be enforced by the Minnesota attorney general or the county attorney who may sue an employer.[51]

## 1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

### 1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

### 1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Minnesota law contains no express provisions regulating employer access to applicants' or employees' social media accounts.

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[49] MINN. STAT. § 13C.03.

[50] MINN. STAT. § 13C.02.

[51] MINN. STAT. §§ 8.31, 13C.03.

 

### 1.3(d) *Polygraph / Lie Detector Testing Restrictions*

#### 1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[52] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

#### 1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Minnesota law prohibits employers from directly or indirectly soliciting or requiring an applicant or employee to take a polygraph, voice stress analysis, or "any test purporting to test the honesty of any employee or prospective employee."[53] However, the law allows an employee to waive its protection.[54] If an employee requests a polygraph test, the employer administering the test must inform him/her that the test is voluntary.[55]

An employer cannot disclose that an employee or applicant has taken a polygraph or any other honesty test, nor disclose the results of any such test, except to the individual who was tested.[56] If a test is given

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[52] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[53] MINN. STAT. § 181.75.

[54] MINN. STAT. § 181.75.

[55] MINN. STAT. § 181.75.

[56] MINN. STAT. § 181.76.

at the request of an employee, the results may only be shared with persons authorized by the employee to receive the results.[57]

### 1.3(d)(iii) *State Enforcement, Remedies & Penalties*

It is a misdemeanor for an employer to knowingly sell, administer, or interpret a polygraph or other honesty test.[58] Moreover, an employer that unlawfully discloses that a polygraph test or other honesty test was taken or discloses the results of such a test, except to the individual tested, commits a misdemeanor.[59]

In addition to civil penalties, courts can prevent and restrain violations of the law and the Minnesota attorney general is entitled to sue for and obtain injunctive relief.[60] As well, an aggrieved individual can file a private lawsuit. If successful, the court can award damages, costs and disbursements (including investigation costs and reasonable attorneys' fees), and other equitable relief.[61]

## 1.3(e) *Drug & Alcohol Testing of Applicants*

### 1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[62] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[63] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

### 1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Minnesota strictly regulates drug and alcohol testing in the workplace under the Minnesota Drug and Alcohol Testing in the Workplace Act, which applies to all Minnesota employers in the state, regardless of size.[64] The statute does not create a legal duty to request or require that a job applicant or employee

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[57] MINN. STAT. § 181.76.

[58] MINN. STAT. § 181.75.

[59] MINN. STAT. §§ 181.75, 181.76.

[60] MINN. STAT. § 181.75.

[61] MINN. STAT. § 181.75.

[62] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[63] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[64] MINN. STAT. § 181.950(7).

undergo testing; however, if requested or required, testing is only allowed to be conducted in conformity with the statute.[65] **Effective August 1, 2023**, cannabis testing is not included in drug and alcohol testing, unless stated otherwise,[66] as discussed in **3.2(c)(ii)**.

**Policy & Notice Requirements.** Employers may only test applicants or employees after enacting and communicating a written drug and alcohol policy or cannabis policy that includes:

- the applicants or employees subject to testing;
- the circumstances under which a test may be requested or required;
- the right of an applicant or employee to refuse the test, and the consequence of such refusal;
- the possible adverse consequences that may follow if a confirmatory test verifies a positive result on an initial screening;
- the right of an applicant or employee to explain a positive result on a confirmatory test or to request and pay for a retest; and
- any available appeal procedures.[67]

The statute imposes strict notice requirements. Before requesting that a job applicant or employee undergo cannabis, drug, or alcohol testing, an employer must provide the individual with a form developed by the employer on which the employee must acknowledge that the employee has seen the employer's drug and alcohol testing or cannabis testing policy.[68] In addition, employers must post the notice in a conspicuous place and make copies available for inspection by employees or job applicants.[69]

**Applicants.** Employers may only require or request that a job applicant undergo preemployment testing if: (1) the applicant has received a conditional offer of employment; and (2) the test is required of all applicants conditionally offered employment for that particular position.[70] Applicants must receive notice that the employer intends to conduct preemployment testing upon receipt of the contingent job offer and before any testing is done.[71] An employer that makes a job offer contingent on passing a cannabis, drug, or alcohol test may only withdraw a conditional offer if the initial screening test is verified by a confirmatory test. After a positive confirmed test, if an employer chooses to withdraw an offer, it must notify the applicant of the reason.[72]

All testing must be performed in a laboratory that meets the statutory requirements and the laboratory must conduct a confirmatory test on all positive samples, or may be conducted via oral fluid testing.[73] If

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[65] *See* MINN. STAT. § 181.951(7).

[66] MINN. STAT. § 181.950.

[67] MINN. STAT. §§ 181.951(1), 181.952(1).

[68] MINN. STAT. § 181.953(6).

[69] MINN. STAT. § 181.952(2).

[70] MINN. STAT. § 181.951(2).

[71] MINN. STAT. § 181.953(6).

[72] MINN. STAT. §§ 181.951(2), 181.953(11).

[73] MINN. STAT. §§ 181.951(1), 181.953. If conducting oral fluid testing, employees must be notified of the test result at the time of the test. If the test produces a positive, inconclusive, or invalid result, the employee may, within 48

 

a test result is positive, the job applicant who is the subject of the test must be given written notice of the right to explain the test result, and within three working days of the notice of a positive result on a confirmatory test, the applicant may request a confirmatory retest at the applicant's own expense.[74] An applicant has the right to request and receive a copy of the test result report on any cannabis, drug, or alcohol test from the employer.[75]

**Employees.** An employer may only test employees under specific circumstances:

1. An employer may require a test during a routine physical examination as long as the test is not required more than once annually, and the employee has been given at least two weeks' written notice in advance that a drug or alcohol test may be required.
2. An employer may conduct random testing of employees in "safety-sensitive" positions, where impairment could threaten the health or safety of others.
3. An employer may request or require an employee to submit to reasonable-suspicion testing if the employer reasonably suspects that one of four conditions has been met:
    a. the employee is under the influence of alcohol or drugs;
    b. the employee has violated a written work rule prohibiting the use, possession, sale, or transfer of cannabis, drugs, or alcohol during work hours on the employer's premises or while operating the employer's equipment;
    c. the employee has sustained a personal injury arising out of or in the course of employment, or has caused a coworker's injury; or
    d. the employee has caused a work-related accident or was operating or helping to operate equipment that was involved in such an accident.
4. An employer may request or require an employee to undergo treatment program testing if the employer has referred the employee for chemical dependency treatment, or the employee is participating in such a program under an employee benefit plan. Such testing may occur without notice for the duration of the program and for a period of two years following the program's completion.[76]

Minnesota's drug testing law places significant restrictions on an employer's ability to use information obtained from cannabis, drug, or alcohol tests. An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee with a positive test result unless the result was verified on a confirmatory test. In addition, an employer may not discharge an employee with a confirmed positive test result for the first time, unless certain conditions have been met:

- after the employee returns a positive test result for the first time, the employer must give the employee an opportunity to participate in a cannabis, drug, or alcohol counseling or

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hours of the test, require the employer to provide them with laboratory testing services at no cost. If the second, laboratory-conducted test comes back with a positive result, any subsequent retests will be at the expense of the employee.

[74] MINN. STAT. § 181.953(6).

[75] MINN. STAT. § 181.953(8).

[76] MINN. STAT. § 181.951(3)-(6). *See also* discussion of cannabis testing in **3.2(c)(ii)**.

 

rehabilitation program at the employee's own expense or through the employer's benefit program; and

- the employee either refuses to participate in the rehabilitation program or fails to successfully complete the program by either withdrawing before completion or by receiving a positive test result on a confirmatory test during or following completion of the program.[77]

In other words, on the first offense, Minnesota employers may not discharge an employee who tests positive for cannabis, drugs, or alcohol unless they offer rehabilitation options, and the offer is refused or the employee fails to complete the program successfully. This limitation on discharge does not prohibit an employer from terminating an employee due to misconduct that is related to the employee's chemical or alcohol dependency, even if the employee tests positive for drugs or alcohol on only one occasion.[78]

**Procedural Safeguards & Confidentiality.** Minnesota's cannabis, drug, and alcohol testing laws contain a number of procedural safeguards that are intended to ensure that testing programs are reliable and fair.[79] Test results may only be disclosed to the employer. Such data must be treated as confidential by employers and may not be disclosed to any other employer or third party, except to a treatment facility or in judicial proceedings when relevant, without the written consent of the job applicant or employee tested.[80]

### 1.3(e)(iii) *State Enforcement, Remedies & Penalties*

Employers may be liable for damages in a civil action for a violation of the drug testing statute, as well as injunctive relief.[81]

### 1.3(f) *Additional State Guidelines on Preemployment Conduct*

### 1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot, directly or indirectly, demand or accept from an employee any part of the employee's wages, or any gratuity, in consideration of giving to or securing, or assisting in securing, employment.[82]

Additionally, employers cannot require employees or job applicants to pay the cost of medical examinations or furnishing medical records required as a condition of employment, except for certificates of attending physicians in connection with the administration of pension and disability benefit plans, citizenship papers, or birth certificates.[83]

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[77] MINN. STAT. § 181.953(10); HB 100; *see also Lewis v. Ashland, Inc.*, 813 F. Supp. 2d 1113 (D. Minn. 2011); *Wehlage v. ING Bank, F.S.B.*, 2008 WL 4838718 (D. Minn. Nov. 5, 2008).

[78] *See Matter of Copeland*, 455 N.W.2d 503 (Minn. Ct. App. 1990).

[79] *See generally* MINN. STAT. § 181.953; HB 100.

[80] MINN. STAT. § 181.954.

[81] MINN. STAT. § 181.956.

[82] MINN. STAT. § 181.031.

[83] MINN. STAT. § 181.61.

 

#### 1.3(f)(ii) *State Restrictions on Salary History Inquiries*

Beginning in 2024, there are restrictions on an employer's ability to inquire into a job applicant's pay history. An employer, as well as an employment agency or labor organization, cannot inquire into, consider, or require disclosure of an applicant's pay history from any source for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant.[84] *Pay history* means an applicant's prior or current wage, salary, earnings, benefits, or any other compensation.[85]

The restrictions do not apply if the applicant's pay history is a matter of public record under federal or state law, unless the employer sought access to those public records with the intent of obtaining pay history of the applicant for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant.[86]

An applicant is not prohibited from disclosing their pay history, voluntarily and without asking, encouraging, or prompting, for the purposes of negotiating wages, salary, benefits, or other compensation. If an applicant voluntarily and without asking, encouraging, or prompting discloses their pay history to a prospective employer, the employer is not prohibited from considering or acting on the applicant's voluntarily disclosed salary history information to support a wage or salary higher than initially offered by the employer.[87]

An employer is not prohibited from:

- providing information about the wages, benefits, compensation, or salary offered in relation to a position; or
- inquiring about or otherwise engaging in discussions with an applicant about the applicant's expectations or requests with respect to wages, salary, benefits, or other compensation.[88]

For employment covered by a collective bargaining agreement, these provisions are not effective until the date of implementation of the applicable collective bargaining agreement that is after the effective date of January 1, 2024.

# 2. TIME OF HIRE

## 2.1 Documentation to Provide at Hire

### 2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| **Benefits & Leave** | Currently, employers covered under the Fair Labor Standards Act (FLSA) |

[84] MINN. STAT. § 363A.08(b).

[85] MINN. STAT. § 363A.08(a).

[86] MINN. STAT. § 363A.08(b).

[87] MINN. STAT. § 363A.08(c).

[88] MINN. STAT. § 363A.08(e).

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| **Documents: Affordable Care Act (ACA)** | must provide to each employee, at the time of hire, written notice:<br>• informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance;<br>• that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[89] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[90] if the employee purchases a qualified health plan through the exchange; and<br>• that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[91]<br><br>The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[92] |
| **Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)** | Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[93]<br><br>Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan |

[89] 26 U.S.C. § 36B.

[90] 42 U.S.C. § 18071.

[91] 29 U.S.C. § 218b.

[92] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[93] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | administrators must send separate COBRA rights notices to each address.[94] |
| **Benefits & Leave Documents: Family and Medical Leave Act (FMLA)** | In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[95] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[96]<br><br>Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[97] |
| **Immigration Documents: Form I-9** | Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[98] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS. |
| **Tax Documents** | On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) |

[94] 29 C.F.R. § 2590.606-1.

[95] 29 C.F.R. § 825.300(a).

[96] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[97] 29 C.F.R. § 825.300(a).

[98] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | relating to their marital status and the number of withholding exemptions they claim.[99] |
| **Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents** | Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[100] |
| **Wage & Hour Documents** | To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[101] |

### 2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| **Benefits & Leave Documents: Paid Family and Medical Leave** | **Effective November 1, 2025**, within 30 days from the beginning date of employment (or 30 days after premium collection begins on January 1, 2026), employers must provide written information in the primary language of the employee describing:<br>• explanation of the availability of PFML benefits, including reinstatement and health insurance continuation;<br>• amount of premium deductions;<br>• employer's premium amount and obligations;<br>• name and mailing address of employer;<br>• identification number assigned to the employer by the state;<br>• instructions on how to file a claim for PFML benefits; mailing address, email, and telephone number of the state department;<br>• any other information required by the state. |

[99] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[100] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[101] 29 C.F.R. § 531.59.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | • delivery is made when the employee provides written or electronic acknowledgment of receipt of the information. Notice may be made in paper or electronic format. If electronic format only, the employer must provide employee access to an employer-owned computer during regular working hours to review and print the notice. Additional requirements apply to employers with seasonal employees. [102] |
| **Benefits and Leave: Earned Sick and Safe Time Leave** | Employers must give notice to all employees that they are entitled to earned sick and safe time, including the amount of earned sick and safe time, the accrual year for the employee, the terms of its use under this section, and a copy of the written policy for providing notice; that retaliation against employees who request or use earned sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if earned sick and safe time is denied by the employer or the employee is retaliated against for requesting or using earned sick and safe time.<br><br>Employers must supply all employees with this by January 1, 2024, and upon hire, thereafter.<br><br>The notice must be in English and the primary language of the employee, as identified by the employee, that contains the information.<br><br>The means used by the employer must be at least as effective as the following options for providing notice:<br>• posting a copy of the notice at each location where employees perform work and where the notice must be readily observed and easily reviewed by all employees performing work;<br>• providing a paper or electronic copy of the notice to employees; or<br>• a conspicuous posting in a web-based or app-based platform through which an employee performs work.<br><br>An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies.<br><br>The Department of Labor and Industry shall prepare a uniform employee notice form for employers to use that provides the notice information required under this section. The commissioner shall prepare the uniform employee notice in the five most common languages spoken in Minnesota. Upon the written request of an employer who is subject to this section, the commissioner shall provide a copy of the uniform |

[102] MINN. STAT. § 268B.01 *et seq*.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | employee notice in any primary language spoken by an employee in the employer's place of business. If the commissioner does not provide the copy of the uniform employee notice in response to a request under this paragraph, the employer who makes the request is not subject to a penalty for failing to provide the required notice under this subdivision for violations that arise after the date of the request.[103] |
| **Drug Testing Documents** | Employers may establish a drug and alcohol testing policy but cannot request or require an employee or applicant to undergo testing except under certain circumstances. For job applicants upon hire, employers must notify candidates in writing of the testing policy, before any testing is requested, if the job offer is contingent on the applicant passing any testing. For further details about restrictions on drug and alcohol testing, as well as requirements for employer testing policies, see **1.3(e)(ii)**.[104] |
| **Employee Invention Documents** | If an employment agreement contains a provision requiring the employee to assign or offer to assign any of the employee's rights in any invention to an employer, the employer must also, at the time the agreement is made, provide a written notice informing the employee that the assignment does not cover all inventions. Specifically, notice must explain that the agreement does not extend to inventions developed on the employee's own time and without the equipment, supplies, facility or trade secret information of the employer, so long as the invention does not: (1) relate directly to the employer's business or to its actual or demonstrably anticipated research or development; or (2) stem from any work performed by the employee for that employer.[105] See **2.3(b)(v)** for additional information. |
| **Fair Employment Practices: Lactation and Pregnancy Accommodations** | Employers must inform employees of their rights under the law at the time of hire as well as when an employee makes an inquiry about or requests parental leave. The notice must be provided in English and any primary language as identified by the employee. For employers that maintain a handbook, the notice must be included in it. The Department of Labor and Industry provides a model notice in English and the five most common languages spoken in Minnesota.[106] |
| **Fair Employment Practices Documents: Wage Transparency** | Employers that provide a handbook must include notice of employee rights and remedies under Minnesota law concerning wage transparency. Employers, for example, must notify employees that they cannot be |

[103] MINN. STAT. § 181.9447. The sample notice is available at https://www.dli.mn.gov/posters.

[104] MINN. STAT. §§ 181.951, 181.952.

[105] MINN. STAT. § 181.78.

[106] MINN. STAT. § 181.939. Model notices are available at https://www.dli.mn.gov/posters.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | prohibited from disclosing their wages or penalized for doing so. See **3.7(b)(v)** for further details.[107] |
| **Personnel Record Access Documents** | Employers with one or more employees must provide written notice to job applicants of their rights concerning personnel file access.[108] See **3.1(c)(ii)** for details on the access statute. |
| **Tax Documents** | All employees must complete withholding exemption certificates (Form W-4MN).[109] |
| **Wage & Hour Documents** | *Employers with 10 or more employees must supply a written and signed agreement of hire which much plainly state:*<br>• date on which the agreement was entered into;<br>• date on which the employee's services will begin;<br>• rate of pay per unit of time, or of commission, or by the piece, so that wages due may be readily computed;<br>• number of hours a day that will constitute a regular day's work, and whether additional hours the employee is required to work constitute overtime and will be paid for, and, if so, the rate of pay for overtime work; and<br>• statement of any special responsibility undertaken by the employee, not forbidden by law, which, if not properly performed, will entitle the employer to make deductions from the employee's wages, and the terms upon which deductions may be made.[110] |
| **Wage & Hour Documents: Written Notice Requirement** | At the start of employment, an employer must provide each employee a written notice containing the following information:<br>1. the rate or rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method, and the specific application of any additional rates;<br>2. allowances, if any, claimed pursuant to permitted meals and lodging;<br>3. paid vacation, sick time, or other paid time-off accruals and terms of use;<br>4. the employee's employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of chapter 177, and on what basis;<br>5. a list of deductions that may be made from the employee's pay;<br>6. the number of days in the pay period, the regularly scheduled pay |

[107] MINN. STAT. § 181.172(c).

[108] MINN. STAT. §§ 181.9631, 181.960.

[109] MINN. STAT. § 290.92. Minnesota withholding forms, as well as other guidance, are available at https://www.revenue.state.mn.us/withholding-tax.

[110] MINN. STAT. § 181.55.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | day, and the payday on which the employee will receive the first payment of wages earned;<br>7. the legal name of the employer and the operating name of the employer if different from the legal name;<br>8. the physical address of the employers main office or principal place of business, and, a mailing address if different; and,<br>9. the employer's telephone number.<br><br>The employer must keep a copy of this notice signed by each employee acknowledging receipt of the notice. The notice must be provided to each employee in English. The English version of the notice must include text provided by the Minnesota Department of Labor and Industry (DLI) that informs employees they may request, by indicating on the form, the notice be provided in a particular language. If requested, the employer must provide the notice in the language requested by the employee. The DLI must make available to employers the text to be included in the English version of the notice and assist employers with translation of the notice in the languages requested by their employees.[111] |
| **Warehouse Distribution Quota** | Employers must provide to each employee a written description of each quota to which the employee is subject and how it is measured, including the quantified number of tasks to be performed or materials to be produced or handled or the limit on time categorized as not performing tasks, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. The written description must be understandable in plain language and in the language identified by each employee as the primary language of that employee. The written description must be provided:<br>• upon hire or within 30 days of the effective date of this section; and<br>• no fewer than one working day prior to the effective date of any increase of an existing quota and no later than the time of implementation for any decrease of an existing quota.[112] |

## 2.2 New Hire Reporting Requirements

### 2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[113] State new hire reporting laws must include these minimum requirements:

[111] MINN. STAT. §181.032(d)-(f). A sample employee notice is available in English at https://www.dli.mn.gov/sites/default/files/pdf/employee_notice_form.pdf and in 12 other languages at https://www.dli.mn.gov/business/employment-practices/employee-notice.

[112] MINN. STAT. § 182.6526.

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[114]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

**Multistate Employers.** The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

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[113] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[114] 42 U.S.C. § 653a.

 

Multistate employers can notify the HHS by mail, fax, or online as follows:

| Table 4. Multistate Employer New Hire Information | |
|---|---|
| **Contact By Mail or Fax** | **Contact Online** |
| Department of Health and Human Services<br>Administration for Children and Families<br>Office of Child Support Enforcement<br>Multi-State Employer Registration<br>Box 509<br>Randallstown, MD 21133<br>Fax: (410) 277-9325 | Register online by submitting a multistate employer notification form over the internet.[115]<br><br>Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time. |

## 2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Minnesota's new hire reporting law.[116]

**Who Must Be Reported.** Minnesota employers must report to the commissioner of human services the hiring of any employee who resides or works in this state to whom the employer anticipates paying earnings. Employers are not required to report the hiring of any person who will be employed for less than two months' duration and will have gross earnings less than $250 per month.

**Report Timeframe.** Employers must submit reports required under this subdivision within 20 calendar days of the date of hiring of the employee.

**Information Required.** Employers must report the employee's name, address, Social Security number, date of hire, and date services for remuneration were first paid, as well as the employer's name, address, and federal employer identification number.

**Form & Submission of Report.** Employers may report by delivering, mailing, or telefaxing a copy of the employee's federal Form W-4 or Form W-9 or any other document that contains the required information, submitting electronic media in a compatible format, toll-free telecommunication, or other means authorized by the commissioner of human services that will result in timely reporting.

**Location to Send Information.**

Minnesota New Hire Reporting Center
P.O. Box 64212
St. Paul, MN 55164
(800) 672-4473
(800) 692-4473 (fax)
http://newhire-reporting.com/MN-Newhire/default.aspx

[115] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[116] MINN. STAT. § 256.998.

## 2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

### 2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[117] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

### 2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

#### 2.3(b)(i) *State Restrictive Covenant Law*

In May 2023, Minnesota enacted the Omnibus Jobs Bill which, among other provisions, prohibits noncompete agreements. **Effective July 1, 2023**, all noncompete agreements with an employee or independent contractor are prohibited. The prohibition has two limited exceptions. Noncompetition agreements will be valid and enforceable if they restrict similar business in a reasonable geographic area for a reasonable period of time and are agreed to: (1) during the sale of a business; or (2) in anticipation of the dissolution of a business. Notable, the bill's definition of a "covenant not to compete" does not include nondisclosure, confidentiality, trade secret, or non-solicitation agreements.[118]

[117] 18 U.S.C. §§ 1832 *et seq.*

[118] S.B. 3035 (Minn. 2023).

For agreements entered into before July 1, 2023, Minnesota courts will enforce reasonable noncompete agreements that are supported by adequate consideration (*i.e.*, money or other benefits).[119]

Courts apply a two-pronged test to determine whether a restrictive covenant is enforceable. First, a court will determine if the covenant is designed to protect a legitimate interest of the employer.[120] If so, the court will decide whether the restraint imposed upon the employee is greater than is reasonably necessary to protect the employer's legitimate interest (in light of the nature and scope of the employer's business).[121] Legitimate interests include protecting an employer's goodwill, customer contacts and relationships, and confidential information.[122]

Second, a noncompete agreement must be reasonable in scope to be enforceable. In determining whether a restrictive covenant is enforceable, courts focus on the following factors: (1) the nature and character of the employment; (2) the length of time of the restriction being imposed; and (3) the geographic area to which the prohibition extends.[123] Enforceable covenants not to compete typically contain both a time and geographic restriction so as to place reasonable parameters on the agreement.[124] Such restrictions must be reasonable in scope.[125]

Generally, where a covenant's geographic and temporal restrictions are broader than necessary to protect the employer's legitimate interests, the agreement will be held invalid.[126] Broader restrictions are more likely to be permissible as against executives, professionals, and technical employees, as opposed to other classes of employees.[127]

Minnesota employers should note that noncompete agreements proffered as a condition of employment must be offered to a prospective employee prior to acceptance of employment offer.[128]

**Effective July 1, 2024**, a "service provider," meaning any partnership, association, corporation, business, or group that acts as an employer performing work contracted or requested by a customer, is prohibited from restricting or prohibiting a customer from soliciting or hiring the service provider's employees or independent contractors, and any provision of an employment contract attempting to establish an agreement of this kind is void. This applies to existing and future employment contracts, and service providers are required to provide notice to all employees whose existing contracts contain a provision that is now unenforceable under the law. However, these provisions do not apply to workers providing

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[119] *See, e.g.*, *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 265 (Minn. Ct. App. 1996).

[120] *Bennett v. Storz Broad. Co.*, 134 N.W.2d 892, 898 (Minn. 1965).

[121] *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 799 (Minn. Ct. App. 1993).

[122] *Salon 2000, Inc. v. Dauwalter*, 2007 WL 1599223, at **2-3 (Minn. Ct. App. June 5, 2007).

[123] *Bennett*, 134 N.W.2d at 899.

[124] *See Harris v. Bolin*, 247 N.W.2d 600, 603 (Minn. 1976).

[125] 247 N.W.2d at 603 n.3.

[126] *Bennett v. Storz Broad. Co.*, 134 N.W.2d 892, 899 (Minn. 1965).

[127] *Village of Elbow Lake v. Otter Tail Power Co.*, 160 N.W.2d 571, n.8 (Minn. 1968).

[128] *Safety Ctr. Inc. v. Stier*, 903 N.W.2d 896 (Minn. Ct. App. 2017); *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161,164 (Minn. App. 1993).

 

computer software consulting that are seeking employment with a service provider with the intention of later seeking employment with a customer of the service provider.[129]

**Enforceability Following Employee Discharge.** Generally, noncompetes entered into prior to July 1, 2023 are enforceable following an employee's discharge in Minnesota. However, a wrongful termination may affect enforcement.[130]

### 2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

For agreements entered into prior to July 1, 2023, where a noncompete agreement is executed prior to or simultaneous with an offer of employment, the consideration for the agreement is the employment itself.[131] A noncompete agreement entered into after the initial offer of employment is accepted, however, must be supported by new and independent valuable consideration.[132] In this situation, continuation of employment in and of itself is not generally sufficient consideration.[133]

What constitutes independent consideration for a noncompete covenant offered after the initial offer of employment is sometimes difficult to define. Promotions, training, guaranteed severance, an employment agreement for a specified term, stock options, and other substantial benefits provided to an employee can be independent consideration, depending on the circumstances of each case. In addition, continued employment over a period of time, such as where the employee is employed for many years, advances within the company, and is given increased responsibilities over time, can be consideration for the agreement.[134] However, where all employees receive the benefit intended as independent consideration—including employees who do not have noncompete agreements—independent consideration is lacking.[135]

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[129] MINN. STAT. § 181.9881.

[130] *Webb Publ'g Co. v. Fosshage*, 426 N.W.2d 445 (Minn. Ct. App. 1988).

[131] *See Overholt Corp. Ins. Serv. Co., Inc. v. Bredeson*, 437 N.W.2d 698, 702 (Minn. Ct. App. 1989).

[132] *AutoUplink Techs., Inc. v. Janson*, 2017 WL 5985458 (Minn. Ct. App. Dec. 4, 2017); *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 265 (Minn. Ct. App. 1996); *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 164 (Minn. Ct. App. 1993).

[133] *Safety Ctr.*, 903 N.W.2d 896.

[134] *See, e.g.*, *Satellite Indus., Inc. v. Keeling*, 396 N.W.2d 635, 639 (Minn. Ct. App. 1986); *see also Witzke v. Mesabi Rehab. Servs. Inc.*, 2008 WL 314535 (Minn. Ct. App. Feb. 5, 2008) (citing *Keeling* with approval and finding that employee's continued employment for 17 years, his advancement within the company, and concomitant salary and responsibility increases constituted independent consideration).

[135] *See Midwest Sports Mktg., Inc.*, 552 N.W.2d at 265-66.

### 2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In Minnesota, courts will redraft agreements entered into prior to July 1, 2023 to make them reasonable and enforceable.[136]

### 2.3(b)(iv) *State Trade Secret Law*

In 1980, Minnesota adopted the Uniform Trade Secrets Act ("MUTSA"). This statute, which embodies and supplements Minnesota's former common-law tort of misappropriation, defines trade secret and prohibits the misappropriation of such materials. Trade secret law in Minnesota seeks to promote and maintain standards of loyalty and trust in the business community.

**Definition of a Trade Secret.** The MUTSA defines *trade secret* as:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique or process, that:
>
> > (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> > (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[137]

The existence of a trade secret is not negated merely because an employee (or other person) has acquired the trade secret without express or specific notice that it is a trade secret, so long as that person knows or has reason to know that the owner intends or expects the secrecy of the trade secret to be maintained.[138]

Courts examine the following factors when analyzing whether a specific piece of information or data qualifies as a trade secret: (1) the information must not be generally known or readily ascertainable to others by legal means; (2) the information must derive independent economic value from secrecy; and (3) the party asserting a claim for misappropriation must have made reasonable efforts to maintain the

[136] *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 799 (Minn. Ct. App. 1993).

[137] MINN. STAT. § 325C.01.

[138] MINN. STAT. § 325C.01.

secrecy of the item.[139] Additionally in a suit for misappropriation of trade secrets, the plaintiff must specify what information it seeks to protect.[140]

**Misappropriation of a Trade Secret.** Misappropriation of trade secrets is a form of unfair competition. In the employment relationship, misappropriation concerns often arise when an employer discloses trade secrets, as defined above, in confidence during the course of an employment relationship. Under the MUTA, *misappropriation* is defined as the:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that the discloser's or user's knowledge of the trade secret was:
        i. derived from or through a person who had utilized improper means to acquire it;
        ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
        iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
    c. before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[141]

The term *improper* in the MUTSA includes "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means."[142] Furthermore, a slight alteration of a competitor's protected secret implicates the same concerns as outright misappropriation. Trade secret protection extends not only to the misappropriated trade secret but also to materials "substantially derived" from that trade secret.[143]

**Remedies for Misappropriation.** An action for misappropriation of a trade secret must be brought within three years after the misappropriation is discovered or should, by the "exercise of reasonable diligence," have been discovered.[144] The MUTSA allows for the injunction of actual or threatened misappropriation.[145] The owner of a trade secret is also entitled to recover damages for misappropriation. These may include both the actual loss caused by misappropriation as well as any

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[139] *Nordale, Inc. v. Samsco, Inc.*, 830 F. Supp. 1263, 1273-74 (D. Minn. 1993); *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 899-901 (Minn. 1983).

[140] *See, e.g.*, *CHS Inc. v. PetroNet L.L.C.*, 2011 WL 1885465, at **7-8 (D. Minn. May 18, 2011).

[141] MINN. STAT. § 325C.01.

[142] MINN. STAT. § 325C.01.

[143] *Wyeth v. Natural Biologics, Inc.*, 2003 WL 22282371 (D. Minn. Oct. 2, 2003), *aff'd*, 395 F.3d 897 (8th Cir. 2005).

[144] MINN. STAT. § 325C.06.

[145] MINN. STAT. § 325C.02.

 

unjust enrichment not taken into account in computing actual loss.[146] The court may also award reasonable attorneys' fees.[147]

#### 2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Minnesota has a statute restricting employer-employee invention agreements that purport to assign the right of the invention or idea to the employer. Specifically, if an employment agreement contains a provision requiring the employee to assign or offer to assign any of the employee's rights in an invention to an employer, the employer must also, at the time the agreement is made, provide *written* notification at the time the agreement is made that the agreement does *not* apply to an invention that:

- used no equipment, supplies, facility, or trade secret information of the employer; and
- was developed entirely on the employees own time, and (1) does not relate either directly to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or (2) does not result from any work performed by the employee for the employer.[148]

# 3. DURING EMPLOYMENT

## 3.1 Posting, Notice & Record-Keeping Requirements

### 3.1(a) *Posting & Notification Requirements*

#### 3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

**Table 5. Federal Posting & Notice Requirements**

| Poster or Notice | Notes |
|---|---|
| **Employee Polygraph Protection Act (EPPA)** | Employers must post and keep posted on their premises a notice explaining the EPPA.[149] |
| **Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)** | Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[150] |

[146] MINN. STAT. § 325C.03(a).

[147] MINN. STAT. § 325C.04.

[148] MINN. STAT. § 181.78.

[149] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[150] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Fair Labor Standards Act (FLSA)** | Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[151] |
| **Family & Medical Leave Act (FMLA)** | Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[152] |
| **Migrant and Seasonal Agricultural Worker Protection Act (MSPA)** | Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[153] |
| **Notice to Workers with Disabilities/Special Minimum Wage Poster** | Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[154] |
| **Occupational Safety and Health Act ("the Fed-OSH Act")** | Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[155] |
| **Uniformed Service Employment and Reemployment Rights Act (USERRA)** | Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[156] |
| In addition to the federal posters required for all employers, government contractors may be | |

[151] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[152] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[153] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[154] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[155] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[156] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| required to post the following posters. | |
| **"EEO is the Law" Poster with the EEO is the Law Supplement** | Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[157] The second page includes reference to government contractors. |
| **Annual EEO, Affirmative Action Statement** | Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[158] |
| **Employee Rights Under the Davis-Bacon Act Poster** | Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[159] |
| **Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster** | Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[160] |
| **E-Verify Participation & Right to Work Posters** | The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[161] |
| **Notice to Workers with** | Employers of workers with disabilities under special minimum wage |

[157] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[158] 41 C.F.R. §§ 60-300.44, 60-741.44.

[159] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[160] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[161] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Disabilities/Special Minimum Wage Poster** | certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[162] |
| **Notification of Employee Rights Under Federal Labor Laws** | Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[163] |
| **Office of the Inspector General's Fraud Hotline Poster** | Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[164] |
| **Paid Sick Leave Under Executive Order No. 13706** | Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[165]<br><br>**Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order.<br><br>**Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written |

[162] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[163] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[164] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[165] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[166] |
| **Pay Transparency Nondiscrimination Provision** | Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[167] |
| **Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)** | Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[168] |

### 3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Benefits & Leave: Paid Family and Medical Leave** | **Effective November 1, 2025**, employers must post notice prepared by the state in a conspicuous place on each of its premises describing benefits under the law. It must be in English and in each language that is the primary language of five or more employees or independent contractors of the workplace, if the state has made such a notice.<br><br>Within 30 days from the beginning date of employment (or 30 days after premium collection begins on January 1, 2026), employers must provide written information in the primary language of the employee describing:<br>• explanation of the availability of PFML benefits, including |

[166] 29 C.F.R. § 13.5.

[167] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[168] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | reinstatement and health insurance continuation;<br>• amount of premium deductions;<br>• employer's premium amount and obligations;<br>• name and mailing address of employer;<br>• identification number assigned to the employer by the state;<br>• instructions on how to file a claim for PFML benefits;<br>• mailing address, email, and telephone number of the state department;<br>• any other information required by the state.<br><br>Delivery is made when the employee provides written or electronic acknowledgment of receipt of the information. Notice may be made in paper or electronic format. If electronic format only, the employer must provide employee access to an employer-owned computer during regular working hours to review and print the notice. Additional requirements apply to employers with seasonal employees.<br><br>**Private Plans**<br>**Effective July 1, 2025**, an employer may offer a private plan, so long as that plan provides benefits and protections that are the same as or greater than those provided under the public plan and is approved by the Division the Department of Employment and Economic Development. The employer must post notice of the private plan for its employees.[169] |
| **Benefits & Leave: Earned Sick and Safe Time** | Employers must give notice to all employees that they are entitled to earned sick and safe time, including the amount of earned sick and safe time, the accrual year for the employee, the terms of its use under this section, and a copy of the written policy for providing notice; that retaliation against employees who request or use earned sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if earned sick and safe time is denied by the employer or the employee is retaliated against for requesting or using earned sick and safe time.<br><br>Employers must supply all employees with this by January 1, 2024, and upon hire, thereafter.<br><br>The notice must be in English and the primary language of the employee, as identified by the employee, that contains the information.<br><br>The means used by the employer must be at least as effective as the following options for providing notice: |

[169] MINN. STAT. § 268B.01 *et seq*.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | • posting a copy of the notice at each location where employees perform work and where the notice must be readily observed and easily reviewed by all employees performing work;<br>• providing a paper or electronic copy of the notice to employees; or<br>• a conspicuous posting in a web-based or app-based platform through which an employee performs work.<br><br>An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies.<br><br>The Department of Labor and Industry shall prepare a uniform employee notice form for employers to use that provides the notice information required under this section. The commissioner shall prepare the uniform employee notice in the five most common languages spoken in Minnesota. Upon the written request of an employer who is subject to this section, the commissioner shall provide a copy of the uniform employee notice in any primary language spoken by an employee in the employer's place of business. If the commissioner does not provide the copy of the uniform employee notice in response to a request under this paragraph, the employer who makes the request is not subject to a penalty for failing to provide the required notice under this subdivision for violations that arise after the date of the request.[170] |
| **Benefits & Leave: Veterans' Benefits and Services** | Employers with more than 50 full-time employees must display a poster describing benefits and services available to veterans. The poster must be displayed in a conspicuous place accessible to all employees in the workplace. The state is expected to create a poster.[171] |
| **Fair Employment Practices: Age Discrimination** | All employers must post conspicuous notice, in an accessible location, informing employees about the state prohibition against age discrimination and laws governing mandatory retirement.[172] |
| **Fair Employment Practices: Lactation and Pregnancy Accommodations** | Employers that maintain a handbook must notify employees of their rights and remedies under the law and also provide a copy when an employee makes an inquiry about or requests parental leave. The notice must be provided in English and any primary language as identified by the employee. The Department of Labor and Industry provides a model notice in English and the five most common languages spoken in Minnesota.[173] |

[170] MINN. STAT. § 181.9447. The sample notice is available at https://www.dli.mn.gov/posters.

[171] MINN. STAT. § 181.536.

[172] MINN. STAT. § 181.81; MINN. R. 5200.0280. This poster is available in English at http://www.dli.mn.gov/sites/default/files/pdf/agediscr_poster.pdf. It is also available in Hmong, Somali, and Spanish at http://www.dli.mn.gov/about-department/workplace-posters.

[173] MINN. STAT. § 181.939. Model notices are available at https://www.dli.mn.gov/posters.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Minnesota Nursing Home Workforce Standards Board Act Notice** | Nursing home employers must provide notices informing nursing home workers of the rights and obligations under the Minnesota Nursing Home Workforce Standards Board Act of applicable minimum nursing home employment standards and local minimum standards and that for assistance and information, nursing home workers should contact the Department of Labor and Industry. A nursing home employer must provide notice using the same means that the nursing home employer uses to provide other work-related notices to nursing home workers. Provision of notice must be at least as conspicuous as:<br>• posting a copy of the notice at each work site where nursing home workers work and where the notice may be readily seen and reviewed by all nursing home workers working at the site; or<br>• providing a paper or electronic copy of the notice to all nursing home workers and applicants for employment as a nursing home worker.<br><br>The Minnesota Nursing Home Workforce Standards Board will provide a sample notice. The nursing home employer must provide the notice in the language requested by the nursing home worker. [174] |
| **Unemployment Compensation** | All employers must post and maintain, in places readily accessible to workers, notices informing employees of their right to apply for unemployment benefits and how to do so.[175] |
| **Wages, Hours & Payroll: Minimum Wage Rates** | All employers must post conspicuous notice, in an accessible location, informing employees about the state minimum wage rates, overtime, and employee protections under the law.[176] |
| **Warehouse Distribution Quota** | Employers must provide to each employee a written description of each quota to which the employee is subject and how it is measured, including the quantified number of tasks to be performed or materials to be produced or handled or the limit on time categorized as not performing tasks, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. The written description must be understandable in plain language and in the language identified by each employee as the primary language of that employee. The written description must be provided:<br>• upon hire or within 30 days of the effective date of this section; and<br>• no fewer than one working day prior to the effective date of any |

[174] MINN. STAT. § 181.215.

[175] MINN. STAT. § 268.068. This poster is available in English at http://uimn.org/assets/109_tcm1068-192562.pdf. It is also available in Hmong, Somali, and Spanish at http://www.dli.mn.gov/about-department/workplace-posters.

[176] MINN. STAT. §§ 177.24, 177.31. This poster is available in English at https://www.dli.mn.gov/sites/default/files/pdf/minwage_poster.pdf. It is also available in Hmong, Somali, and Spanish at http://www.dli.mn.gov/about-department/workplace-posters.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | increase of an existing quota and no later than the time of implementation for any decrease of an existing quota.[177] |
| **Workers' Compensation** | All employers that are required to carry, or that have elected to carry, workers' compensation insurance must post conspicuous notice, at all locations, informing employees of their rights and obligations and identifying the employer's insurance carrier.[178] |
| **Workplace Safety: No Smoking Signs** | In Minnesota, smoking is prohibited in indoor places of employment with two or more employees. Employers must post signs at all entrances to the workplace stating that "Smoking is prohibited in this entire establishment" or a including similar notice.[179] |
| **Workplace Safety: Safety & Health Protection on the Job** | All employers must post conspicuous notice, where such notices are customarily displayed, informing employees of their rights and protections under the Minnesota Occupational Safety and Health Act.[180] |

### 3.1(b) *Record-Keeping Requirements*

#### 3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Age Discrimination in Employment Act (ADEA): Payroll Records** | *Covered employers must maintain the following payroll or other records for each employee:*<br>• employee's name, address, and date of birth;<br>• occupation;<br>• rate of pay; and<br>• compensation earned each week.[181] | At least 3 years from the date of entry. |
| **Age** | *Employers that maintain the following personnel records in* | At least 1 year |

[177] MINN. STAT. § 182.6526.

[178] MINN. STAT. §§ 176.139, 177.31; MINN. R. 5218.0250. This poster is available in English at http://www.dli.mn.gov/sites/default/files/pdf/workerscomp_poster.pdf. It is also available in Hmong, Somali, and Spanish at http://www.dli.mn.gov/about-department/workplace-posters.

[179] MINN. STAT. §§ 144.411 to 144.417.

[180] MINN. STAT. §§ 181.934, 182.658; MINN. R. 5210.0420. This poster is available in English at http://www.dli.mn.gov/sites/default/files/pdf/mnosha_poster.pdf. It is also available in Hmong, Somali, and Spanish at http://www.dli.mn.gov/about-department/workplace-posters.

[181] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Discrimination in Employment Act (ADEA): Personnel Records** | *the course of business are required by the ADEA to keep them for the specified period of time:*<br>• job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual;<br>• promotion, demotion, transfer, selection for training, recall, or discharge of any employee;<br>• job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;<br>• test papers completed by applicants which disclose the results of any employment test considered by the employer;<br>• results of any physical examination considered by the employer in connection with a personnel action; and<br>• any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[182] | from the date of the personnel action to which any records relate. |
| **Age Discrimination in Employment (ADEA): Benefit Plan Documents** | *Employer must keep on file any:*<br>• employee benefit plans, such as pension and insurance plans; and<br>• copies of any seniority systems and merit systems in writing.[183] | For the full period the plan or system is in effect, and for at least 1 year after its termination. |
| **Title VII & the Americans with Disabilities Act (ADA): Personnel Records** | *Employers must preserve any personnel or employment record made, including:*<br>• requests for reasonable accommodation;<br>• application forms submitted by applicants;<br>• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination;<br>• rates of pay or other terms of compensation; and<br>• selection for training or apprenticeship.[184] | At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later. |
| **Title VII & the Americans with Disabilities Act (ADA):** | *When a charge of discrimination has been filed or an action brought against the employer, it must:*<br>• make and keep such records relevant to the determination of whether unlawful employment | Until final disposition of the charge or action (*i.e.*, until |

[182] 29 C.F.R. § 1627.3(b).

[183] 29 C.F.R. § 1627.3(b).

[184] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Complaints of Discrimination** | practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and<br>• retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[185] | the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated). |
| **Title VII & the Americans with Disabilities Act (ADA): Other** | An employer must keep and maintain its Employer Information Report (EEO-1).[186] | Most recent form must be retained for 1 year. |
| **Employee Polygraph Protection Act (EPPA)** | *Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:*<br>• a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney;<br>• the notice to the examiner identifying the person to be examined;<br>• copies of opinions, reports, or other records given to the employer by the examiner;<br>• where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and<br>• where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[187] | At least 3 years following the date on which the polygraph examination was conducted. |
| **Employee** | Employers that sponsor an ERISA-qualified plan must | At least 6 years |

[185] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[186] 29 C.F.R. § 1602.7.

[187] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Retirement Income Security Act (ERISA)** | maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[188] | after documents are filed or would have been filed but for an exemption. |
| **Equal Pay Act** | Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[189] | 3 years. |
| **Equal Pay Act: Other** | *Covered employers must maintain any additional records made in the regular course of business relating to:*<br>• payment of wages;<br>• wage rates;<br>• job evaluations;<br>• job descriptions;<br>• merit and seniority systems;<br>• collective bargaining agreements; and<br>• other matters which describe any pay differentials between the sexes.[190] | At least 2 years. |
| **Fair Labor Standards Act (FLSA): Payroll Records** | *Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth, if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins;<br>• regular hourly rate of pay for any workweek in which overtime compensation is due;<br>• basis on which wages are paid (pay interval);<br>• amount and nature of each payment excluded from the employee's regular rate;<br>• hours worked each workday and total hours worked each workweek; | 3 years from the last day of entry. |

[188] 29 U.S.C. § 1027.

[189] 29 C.F.R. § 1620.32(a).

[190] 29 C.F.R. § 1620.32(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;<br>• total premium pay for overtime hours;<br>• total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments;<br>• total wages paid each pay period;<br>• date of payment and the pay period covered by the payment;<br>• records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and<br>• for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[191] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week. | |
| **Fair Labor Standards Act (FLSA): Tipped Employees** | *Employers must maintain and preserve all Payroll Records noted above as well as:*<br>• a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;<br>• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070);<br>• amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage);<br>• hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and<br>• hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[192] | |

[191] 29 C.F.R. §§ 516.2, 516.5.

[192] 29 C.F.R. § 516.28.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Fair Labor Standards Act (FLSA): White Collar Exemptions** | *For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins;<br>• total wages paid each pay period;<br>• date of payment and the pay period covered by the payment; and<br>• basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[193] | 3 years from the last day of entry. |
| **Fair Labor Standards Act (FLSA): Agreements & Other Records** | *In addition to payroll information, employers must preserve agreements and other records, including:*<br>• collective bargaining agreements and any amendments or additions;<br>• individual employment contracts or, if not in writing, written memorandum summarizing the terms;<br>• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);<br>• certain plans and trusts under FLSA section 7(e);<br>• certificates and notices listed or named in the FLSA; and<br>• sales and purchase records.[194] | At least 3 years from the last effective date. |
| **Fair Labor Standards Act (FLSA): Other Records** | *In addition to other FLSA requirements, employers must preserve supplemental records, including:*<br>• basic time and earning cards or sheets;<br>• wage rate tables;<br>• order, shipping, and billing records; and<br>• records of additions to or deductions from wages.[195] | At least 2 years from the date of last entry. |

[193] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[194] 29 C.F.R. § 516.5.

[195] 29 C.F.R. § 516.6.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Family and Medical Leave Act (FMLA)** | *Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours per pay period;<br>• additions to or deductions from wages and total compensation paid;<br>• dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA);<br>• if FMLA leave is taken in increments of less than one full day, the hours of the leave;<br>• copies of employee notices of leave furnished to the employer under the FMLA, if in writing;<br>• copies of all general and specific notices given to employees in accordance with the FMLA;<br>• any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;<br>• premium payments of employee benefits; and<br>• records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement.<br><br>*Covered employers with no eligible employees must only maintain the following records:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours worked per pay period;<br>• additions to or deductions from wages; and<br>• total compensation paid.<br><br>*Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* | At least 3 years. |

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:*<br>• FMLA eligibility is presumed for any employee employed at least 12 months; and<br>• with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record.<br><br>*Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[196] | |
| **Federal Insurance Contributions Act (FICA)** | *Employers must keep FICA records, including:*<br>• copies of any return, schedule, or other document relating to the tax;<br>• records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration:<br>▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card;<br>▪ total amount and date of each payment of remuneration (including any sum withheld as tax or | At least 4 years after the date the tax is due or paid, whichever is later. |

[196] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | for any other reason) and the period of services covered by such payment;<br>▪ amount of each such remuneration payment that constitutes wages subject to tax;<br>▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and<br>▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this;<br>• the details of each adjustment or settlement of taxes under FICA; and<br>• records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[197] | |
| **Immigration** | Employers must retain all completed Form I-9s.[198] | 3 years after the date of hire or 1 year following the termination of employment, whichever is later. |
| **Income Tax: Accounting Records** | *Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:*<br>• regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[199] | Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as |

[197] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[198] 8 C.F.R. § 274a.2.

[199] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | | long as 15 years in some cases. |
| **Income Tax: Employee Payment Records** | *Employers are required to maintain records reflecting all remuneration paid to each employee, including:*<br>• employee's name, address, and account number;<br>• total amount and date of each payment;<br>• the period of services covered by the payment;<br>• the amount of remuneration that constitutes wages subject to withholding;<br>• the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected;<br>• an explanation for any discrepancy between total remuneration and taxable income;<br>• the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and<br>• other supporting documents relating to each employee's individual tax status.[200] | 4 years after the return is due or the tax is paid, whichever is later. |
| **Income Tax: W-4 Forms** | Employers must retain all completed Form W-4s.[201] | As long as it is in effect and at least 4 years thereafter. |
| **Unemployment Insurance** | *Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:*<br>• total amount of remuneration paid to employees during the calendar year for services performed;<br>• amount of such remuneration which constitutes wages subject to taxation;<br>• amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration;<br>• information required to be shown on the tax return and the extent to which the employer is liable for the tax;<br>• an explanation for any discrepancy between total | At least 4 years after the later of the date the tax is due or paid for the period covered by the return. |

[200] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[201] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | remuneration paid and the amount subject to tax; and<br>• the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[202] | |
| **Workplace Safety / the Fed-OSH Act: Exposure Records** | *Employers must preserve and retain employee exposure records, including:*<br>• environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained;<br>• biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and<br>• Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used.<br><br>*Exceptions to this requirement include:*<br>• background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years;<br>• MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and<br>• biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[203] | At least 30 years. |
| **Workplace Safety / the Fed-OSH Act: Medical** | *Employers must preserve and retain "employee medical records," including:*<br>• medical and employment questionnaires or histories; | Duration of employment plus 30 years. |

[202] 26 C.F.R. § 31.6001-4.

[203] 29 C.F.R. § 1910.1020(d).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Records** | • results of medical examinations and laboratory tests;<br>• medical opinions, diagnoses, progress notes, and recommendations;<br>• first aid records;<br>• descriptions of treatments and prescriptions; and<br>• employee medical complaints.<br><br>*"Employee medical record" does not include:*<br>• physical specimens;<br>• records of health insurance claims maintained separately from employer's medical program;<br>• records created solely in preparation for litigation that are privileged from discovery;<br>• records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and<br>• first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[204] | |
| **Workplace Safety: Analyses Using Medical and Exposure Records** | *Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[205] | At least 30 years. |
| **Workplace Safety: Injuries and Illnesses** | *Employers must preserve and retain records of employee injuries and illnesses, including:*<br>• OSHA 300 Log;<br>• the privacy case list (if one exists);<br>• the Annual Summary;<br>• OSHA 301 Incident Report; and<br>• old 200 and 101 Forms.[206] | 5 years following the end of the calendar year that the record covers. |

[204] 29 C.F.R. § 1910.1020(d).

[205] 29 C.F.R. § 1910.1020(d).

[206] 29 C.F.R. §§ 1904.33, 1904.44.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations. | | |
| **Affirmative Action Programs (AAP)** | *Contractors required to develop written affirmative action programs must maintain:*<br>• current AAP and documentation of good faith effort; and<br>• AAP for the immediately preceding AAP year and documentation of good faith effort.[207] | Immediately preceding AAP year. |
| **Equal Employment Opportunity: Personnel & Employment Records** | *Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:*<br>• records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship;<br>• other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and<br>• any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes;<br>▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search;<br>▪ for purposes of record keeping with respect to external resume databases, the contractor must | 3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later."<br><br>If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later. |

[207] 41 C.F.R. § 60-1.12(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor).<br><br>*Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:*<br>• gender, race, and ethnicity of each employee; and<br>• where possible, the gender, race, and ethnicity of each applicant or internet applicant.[208] | |
| **Equal Employment Opportunity: Complaints of Discrimination** | *Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:*<br>• personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and<br>• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[209] | Until final disposition of the complaint, compliance review or action. |
| **Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)** | *Covered contractors and subcontractors performing work must maintain for each worker:*<br>• name, address, and Social Security number;<br>• occupation(s) or classification(s);<br>• rate or rates of wages paid;<br>• number of daily and weekly hours worked;<br>• any deductions made; and<br>• total wages paid.<br><br>These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of | 3 years. |

[208] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[209] 41 C.F.R. §§ 60-1.12, 60-741.80.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | the WHD to conduct interviews with workers at the worksite during normal working hours.[210] | |
| **Paid Sick Leave Under Executive Order No. 13706** | *Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:*<br>• employee's name, address, and Social Security number;<br>• employee's occupation(s) or classification(s);<br>• rate(s) of wages paid (including all pay and benefits provided);<br>• number of daily and weekly hours worked;<br>• any deductions made;<br>• total wages paid (including all pay and benefits provided) each pay period;<br>• a copy of notifications to employees of the amount of accrued paid sick leave;<br>• a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests;<br>• dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO);<br>• a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests;<br>• any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee;<br>• any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;<br>• the relevant covered contract;<br>• the regular pay and benefits provided to an employee for each use of paid sick leave; and<br>• any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[211] | During the course of the covered contract as well as after the end of the contract. |
| **Davis-Bacon Act** | *Davis-Bacon Act contractors or subcontractors must maintain* | At least 3 years |

[210] 29 C.F.R. § 23.260.

[211] 29 C.F.R. § 13.25.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | *the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents);<br>• daily and weekly number of hours worked; and<br>• deductions made and actual wages paid.<br><br>*Contractors employing apprentices or trainees under approved programs must maintain written evidence of:*<br>• registration of the apprenticeship programs;<br>• certification of trainee programs;<br>• the registration of the apprentices and trainees;<br>• the ratios and wage rates prescribed in the program; and<br>• worker or employee employed in conjunction with the project.[212] | after the work. |
| **Service Contract Act** | *Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• rates of wage;<br>• fringe benefits;<br>• total daily and weekly compensation;<br>• the number of daily and weekly hours worked;<br>• any deductions, rebates, or refunds from daily or weekly compensation;<br>• list of wages and benefits for employees not included in the wage determination for the contract;<br>• any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and<br>• a copy of the contract.[213] | At least 3 years from the completion of the work records containing the information. |
| **Walsh-Healey Act** | *Walsh-Healey Act supply contractors must keep the following records:*<br>• wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; | At least 3 years from the last date of entry. |

[212] 29 C.F.R. § 5.5.

[213] 29 C.F.R. § 4.6.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • the period in which each employee was engaged on a government contract and the contract number;<br>• name, address, sex, and occupation;<br>• date of birth of each employee under 19 years of age; and<br>• a certificate of age for employees under 19 years of age.[214] | |

### 3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the essential state record-keeping requirements. Additional requirements apply to government contractors, which are not covered here.[215]

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Fair Employment Practices: Application & Employment Records** | All employers must maintain all applicant and employment records.[216] | 1 year. |
| **Fair Employment Practices: Apprenticeship Programs** | *Employers that sponsor voluntary apprenticeship programs under Minnesota law must keep records, including:*<br>• training progress of each apprentice; and<br>• records of applicants, selected and rejected, in a manner that permits identification of minority and female participants.[217] | 5 years. |
| **Fair Employment Practices: Charge of Discrimination** | An employer notified that a charge of discrimination has been filed must maintain all documents relating to the charge.[218] | Until the commissioner notifies the employer that the charge has been resolved. |

[214] 41 C.F.R. § 50-201.501.

[215] *See, e.g.*, MINN. STAT. §§ 177.30, 177.43; *see also* MINN. R. 5200.1106(9)-(10) (records of public works contractors); MINN. R. § 5000.3535 (affirmative action records of government contractors).

[216] MINN. R. 5000.2250(3).

[217] MINN. R. 5200.0320, 5200.0420.

[218] MINN. R. 5000.2250(1).

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Unemployment Compensation** | *Each employer must keep and maintain records, for each individual, including:*<br>• name and Social Security number;<br>• days and the number of hours each day in which the individual performed services and location of service;<br>• wages paid and wages due but not paid;<br>• rate of pay; and<br>• amounts paid as allowance or reimbursement for travel or other activity which was not included as wages. These records must show each item of expense incurred during each pay period or calendar month and the complete resident address of the employee.<br><br>*If an employee performs services both in Minnesota and outside Minnesota, the records should also include:*<br>• the state in which the employer maintains a base of operations used by the individual;<br>• the state from which services are directed and controlled; and<br>• a list of states in which the employee performs services other than temporary or incidental services and the dates services were performed at each state[219] | Not less than 4 years, in addition to the current calendar year. |
| **Wages, Hours & Payroll** | *Employers must keep employment and payroll records, including:*<br>• name, address, and occupation of each employee;<br>• rate of pay, and the amount paid each pay period to each employee;<br>• hours worked each day and each workweek by each employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate;<br>• a list of the personnel policies provided to the employee, including the date given and a brief description of the policies;<br>• a copy of the wage statement notice;<br>• beginning and ending time of each work day, including a.m. and p.m. designations;<br>• For each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the employer must furnish under oath signed by an owner or officer of | 3 years. |

[219] MINN. STAT. § 268.186; MINN. R. 3315.1010.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks specifying for each employee: name; identifying number; prevailing wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs;<br>• any other information necessary to enforce the Minnesota Fair Labor Standards Act.[220]<br><br>*Employers that furnish meals and intend to take meal credits must also keep records of every meal accepted by each employee, before any credit may be taken.*[221] | |
| **Wages, Hours & Payroll: Written Notice Requirement** | As discussed in **2.1(b)**, an employer must provide an employee at the start of employment with written notice containing certain payroll information. An employer must also provide the employee with any written changes to the information contained in the notice prior to the date the changes take effect. An employer is required to keep a copy of this notice signed by each employee acknowledging receipt of the notice.[222] | None specified. |
| **Workplace Safety: Employer Activities for Determining Causes and Prevention** | Employers must make, keep, preserve, and make available for inspection, records concerning their activities as may be necessary or appropriate for determining causes and prevention of occupational accidents and illnesses, including all work-related deaths and all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work.<br>Information need not be retained concerning "minor injuries requiring only first aid treatment and which do not involve | None specified. |

[220] MINN. STAT. § 177.30; MINN. R. 5200.0100.

[221] MINN. R. 5200.0600.

[222] MINN. STAT. § 181.032(d)-(f).

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | medical treatment, loss of consciousness, restrictions of work or motion, or transfer to another job."[223] | |
| **Workplace Safety: Hazardous Substances Exposure & Training** | *All employers must keep and preserve accurate records identifying employee exposure to hazardous substances or harmful physical agents.*<br><br>*Records of hazardous substances training conducted also must be kept, including:*<br>• dates conducted;<br>• name, title, and qualifications of person conducing the training;<br>• names and job titles of employees who completed training; and<br>• a brief summary or outline of information included in training.[224] | 5 years for farming operations training plans, and 3 years for other employers. |
| **Workplace Safety: Injury & Illness Recording** | Minnesota has adopted the federal-OSHA Occupational Injury and Illness Recording and Reporting Requirements, with the exception of 29 C.F.R. 1904.2.[225] | See Federal rule. |
| **Workplace Safety: Labor-Management Safety Committee** | *Employers with more than 25 employees (and smaller employers with high incident rates) must establish a labor-management safety committee and must maintain records, including:*<br>• all safety and health committee recommendations or reports regarding work-related deaths, injuries, and illnesses made to the employer; and<br>• records of all hazards identified by the committee, and recommendations relating thereto.[226] | 2 years. |
| **Workplace Safety: Material Safety Data** | Employers must make Material Safety Data Sheets (MSDS) available to employees, for each hazardous substance to which they are routinely exposed. Moreover, employers must | None specified. |

[223] MINN. STAT. § 182.663.

[224] MINN. STAT. § 182.663; MINN. R. 5206.0100; *see* MINN. R. 5206.700 (training in general), 5206.1700 (farm operations training).

[225] *See* Minnesota Dep't of Labor & Indus., Occupational Safety and Health Div., *Minnesota OSHA Compliance – Recordkeeping Standard*, *available at* https://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard.

[226] MINN. STAT. § 182.676; MINN. R. 5208.0040, 5208.0050.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Sheets** | records of notices concerning the unavailability of any MSDS.[227] | |
| **Earned Sick and Safe Time** | **Effective January 1, 2024**, employers must retain accurate records documenting:<br>• Hours worked.<br>• Leave taken.[228] | None specified |
| **Paid Family and Medical Leave** | Employers must keep records of all individuals performing services for them. The State will determine what records will be required.[229] | 4 years plus the current calendar year. |

### 3.1(c) *Personnel Files*

#### 3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

#### 3.1(c)(ii) *State Guidelines on Personnel Files*

In Minnesota, employee access to personnel files is governed by statute. The statute applies to employers with one or more employees.[230] Under the statute, *personnel record* means:

> any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record.[231]

Personnel records do not include:

- written references or letters of recommendation;
- information relating to a criminal or civil investigation, unless and until: (1) the investigation is completed, the employer has received notice from the prosecutor that no action will be taken, or all criminal proceedings and appeals have been exhausted; and (2) the employer takes adverse personnel action based on the information in the investigation records;
- education records (under the Family Educational Rights and Privacy Act of 1974) maintained by an educational institution and directly related to a student;

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[227] MINN. R. 5206.1800.

[228] MINN. STAT. § 181.9447.

[229] MINN. STAT. § 268B.21.

[230] MINN. STAT. §§ 181.960 *et seq*.

[231] MINN. STAT. § 181.960.

- results of employer testing, except that an employee may see a cumulative total test score for a test section or for the entire test;
- information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans, and job assignments;
- written comments or data of a personal nature about another person, if disclosure of the information would constitute an intrusion upon the other person's privacy;
- written comments or data kept by an employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the author's sole possession;
- privileged information or information that is not discoverable in a workers' compensation hearing, grievance arbitration, or other administrative, judicial, or quasi-judicial proceeding;
- any portion of a written or transcribed statement by an employee's coworker that concerns the job performance or job-related misconduct of the employee, if it discloses the identity of the coworker by name, inference, or otherwise; and
- medical reports and records, including reports available to the employee from a health care services provider.[232]

**Requests for Access to Personnel Files.** An employee may make a good faith written request to view their personnel record.[233] Employers are not required to provide an opportunity to review if the employee has reviewed the personnel record during the previous six months. If the records are located within the state, the employer must comply within seven working days; if outside the state, within 14 days. The file must be available for review during normal business hours, but not necessarily the employee's working hours, at the employee's place of employment or a nearby location. The employer may require that the employee inspect their file in the presence of the employer or a designee.[234]

Upon written request, after the review of the personnel file, the employer must provide a copy of the file to the employee. Upon written request by a former employee, an employer must provide a copy of the personnel file. Employers may not charge for the copies.[235]

Upon separation from employment, a former employee may review their personnel record once per year after separation for as long as the file is maintained. Upon written request, the employer must provide a copy of the personnel record to the former employee, which satisfies the employer's responsibility to allow review.[236]

**Disputes over Personnel Files.** If an employee disagrees with any of the information in their personnel file, the employee and employer may agree to remove or correct the information. If the employee and employer cannot agree, the employee may submit a written statement explaining the employee's

[232] MINN. STAT. § 181.960.

[233] MINN. STAT. § 181.961.

[234] MINN. STAT. § 181.961.

[235] MINN. STAT. § 181.961.

[236] MINN. STAT. § 181.961.

 

position. Such a statement may not exceed five pages. The statement must remain in the personnel file so long as the disputed information is included and be included in any disclosure to a third party.[237]

## 3.2 Privacy Issues for Employees

### 3.2(a) *Background Screening of Current Employees*

#### 3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

#### 3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

### 3.2(b) *Drug & Alcohol Testing of Current Employees*

#### 3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

#### 3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

The Minnesota legislature has enacted a comprehensive statutory framework that establishes limits and accepted procedures governing workplace testing for cannabis, drugs, and alcohol use.[238] For information on the Minnesota Drug and Alcohol Testing in the Workplace Act, see **1.3(e)(ii)**.

### 3.2(c) *Marijuana Laws*

#### 3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[239]

#### 3.2(c)(ii) *State Guidelines on Marijuana*

Minnesota has enacted both medical and recreational marijuana laws.

In 2014, Minnesota enacted the Therapeutic Research Act, which allows citizens access to medical marijuana.[240] This law prevents employers from discriminating against a person in hiring, termination, or any term or condition of employment based on their status as a patient or positive drug test for cannabis components or metabolites, unless the person used, possessed, or was impaired by medical cannabis on the employer's premises during hours of employment.[241]

As of July 1, 2024, a patient's positive drug test for cannabis components or metabolites will not be protected if a patient used, possessed, sold, transported, or was impaired by medical cannabis flower or a medical cannabinoid product on work premises, during working hours, or while operating an

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[237] MINN. STAT. § 181.962.

[238] MINN. STAT. §§ 181.950 *et seq*.

[239] 21 U.S.C. §§ 811-12, 841 *et seq*.

[240] MINN. STAT. §§ 152.22 *et seq.*, repealed as of December 1, 2025, by MINN. HB 4757, replaced as of July 1, 2024, by MINN. STAT. §§ 342.47 *et seq.* (enacted by MINN. HB 100 (2023)), as amended by MINN. HB 4757 (2024)).

[241] MINN. STAT. § 152.32, repealed as of December 1, 2025, by MINN. HB 4757 (2024), replaced as of July 1, 2024, by MINN. STAT. § 342.57 (enacted by MINN. HB 100 (2023)), as amended by MINN. HB 4757 (2024)).

 

employer's machinery, vehicle, or equipment. In addition, a patient will be able to bring a private action for damages against an employer for violation of the medical cannabis protections for the greater of the person's actual damages or a civil penalty of $100 and reasonable attorney fees.[242]

The Minnesota Supreme Court held that the federal Controlled Substances Act preempts a Minnesota workers' compensation statute under which employers must reimburse employees for medical expenses – here medical cannabis costs – because compliance with a workers' compensation order requiring the same would expose the employer to federal criminal liability for aiding and abetting unlawful possession of cannabis.[243]

**Effective August 1, 2023**, the recreational use of marijuana is legal for individuals aged 21 or older. Under the law, marijuana tetrahydrocannabinols, cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products are no longer defined as drugs for purposes of drug and alcohol testing, unless stated otherwise.[244] Unique to Minnesota, the law separately defines *cannabis testing* as the analysis of a body component sample according to the standards established by for the purpose of measuring the presence or absence of cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or cannabis metabolites in the sample tested.[245]

The law does not require an employer to accommodate or permit an employee's use of recreational marijuana[246] in the workplace. Employers may adopt work rules prohibiting marijuana use in the workplace. The rules must be in writing, must contain the minimum information required by the law, and can only apply when the employee is working, is on the employer's premise, or is operating the employer's vehicle, machinery, or equipment.[247]

An employer can discipline, discharge, or take other adverse personnel action against an employee for marijuana use, possession, impairment, sale, or transfer while an employee is working, present on the employer's premises, or operating the employer's vehicle, machinery, or equipment as follows:

- if, as the result of consuming marijuana, the employee does not possess that clearness of intellect and control of self that the employee otherwise would have;
- if cannabis testing verifies the presence of marijuana following a confirmatory test;

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[242] MINN. STAT. § 342.57 enacted by MINN. HB 100 (2023), as amended by MINN. HB 4757 (2024), effective July 1, 2024.

[243] *Musta v. Mendota Heights Dental Ctr. & Hartford Ins. Grp.*, 965 N.W.2d 312(Minn. 2021). *See also, e.g.*, *Bierbach v. Digger's Polaris*, 965 N.W.2d 281 (Minn. 2021) ("For the reasons stated in [Musta] . . . [w]e also hold that the CSA preempts the compensation court's order mandating relators to pay for [claimant's] medical cannabis") and *Warhol v. Corexpo, Inc.*, 967 N.W.2d 241 (Minn. 2021) (reversing award of benefits for medical marijuana based on *Musta*).

[244] MINN. STAT. § 181.950.

[245] MINN. STAT. § 181.950, subd. 5a.

[246] The law uses and defines the terms cannabis flower, cannabinoid products, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products, as well as marijuana tetrahydrocannabinols. For ease of discussion, the term "marijuana" will be used here to refer to these products.

[247] MINN. STAT. § 181.952; *see also* **3.11(a)(iii)** discussing additional discrimination protections for lawful marijuana use.

 

- as provided in the employer's written work rules for marijuana use and cannabis testing, provided that the rules are in writing and in a written policy that contains the minimum information required; or
- as otherwise authorized or required under state or federal law or regulations, or if a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.[248]

Unless otherwise required by state or federal law, an employer cannot request or require a job applicant to undergo cannabis testing as a condition of employment. In addition, an employer cannot refuse to hire a job applicant solely because the job applicant submits to a cannabis test or a drug and alcohol test, and the results of the test indicate the presence of cannabis. Finally, an employer cannot request or require an employee or job applicant to undergo cannabis testing on an arbitrary or capricious basis and cannabis testing must comply with the safeguards for testing provided by sections 181.953 and 181.954, as discussed in **1.3(e)(ii)**.[249]

For the following positions, however, cannabis and its metabolites are considered a drug and will be subject to required drug and alcohol testing:

- a safety sensitive position, which is defined as a job, including any supervisory or management position, in which an impairment caused by cannabis usage would threaten the health or safety of any person;[250]
- a peace officer position;
- a firefighter position;
- a position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to:
  - children;
  - vulnerable adults; or
  - patients who receive health care services from their provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition;
- a position requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of the job applicant or an employee;
- a position of employment funded by a federal grant; or
- any other position for which state or federal law requires testing of the job applicant or an employee for cannabis.[251]

The law also specifies instances where an employer may conduct additional cannabis testing, similar to those for drugs and alcohol generally, as discussed in **1.3(e)(ii)**. For example, employers may request or require an employee in a safety sensitive position to undergo cannabis testing on a random selection

[248] MINN. STAT. §§ 181.953, 181.938.

[249] MINN. STAT. § 181.951, subd. 8, as amended by MINN. HB 4757 (2024).

[250] MINN. STAT. § 181.950.

[251] MINN. STAT. § 181.951.

 

basis.[252] An employer may also request or require an employee to undergo cannabis testing if the employer has a reasonable suspicion that the employee:

- is under the influence of drugs, cannabis, or alcohol;
- has violated the employer's written work rules prohibiting the use, possession, impairment, sale, or transfer of drugs or alcohol, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, if the work rules are in writing and contained in the employer's written cannabis testing policy;
- has sustained a personal injury or has caused another employee to sustain a personal injury; or
- has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicle involved in a work-related accident.[253]

### 3.2(d) *Data Security Breach*

### 3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[254]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[255]

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[252] MINN. STAT. § 181.951.

[253] Minn. Stat. § 181.951, subd. 5, as amended by MINN. HB 4757 (2024).

[254] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

 

### 3.2(d)(ii) *State Data Security Breach Guidelines*

Minnesota law requires that when a covered entity becomes aware of a computer security breach involving unencrypted personally identifiable information, they must notify the affected class.[256]

**Covered Entities & Information.** Any person or business that conducts business in Minnesota and that owns or licenses data that includes personal information is covered under the data security breach statute. Under the statute, *personal information* means an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license number or Minnesota identification number; or
- account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

Personal information does not include data that is encrypted or data that is publicly available.

**Content & Form of Notice.** Notice may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 500,000; or
  - the information holder does not have sufficient contact information.

Substitute notice must consist of all of the following:

- email notice when the information holder has an email address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the information holder maintains a website; and
- notification by statewide media.[257]

**Timing of Notice.** The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or with any measures necessary to determine the scope of the breach, identify the individuals affected, and restore the reasonable integrity of the data system.[258]

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[255] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[256] MINN. STAT. § 325E.61.

[257] MINN. STAT. § 325E.61(1).

[258] MINN. STAT. § 325E.61(1).

**Additional Provisions.** If more than 500 individuals will be notified of a security breach, then the information holder must also notify all nationwide consumer reporting agencies of the timing, distribution, and content of the notices.[259]

## 3.3 Minimum Wage & Overtime

### 3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[260] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

### 3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[261]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[262]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[263]

### 3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[264] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

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259 MINN. STAT. § 325E.61(2).

260 29 U.S.C. § 218(a).

261 29 U.S.C. § 206.

262 29 U.S.C. §§ 203, 206.

263 29 U.S.C. § 3(m)(2)(B).

264 29 U.S.C. § 207.

### 3.3(b) *State Guidelines on Minimum Wage Obligations*

#### 3.3(b)(i) *State Minimum Wage*

Currently, Minnesota maintains numerous types of minimum wage rates, which vary depending on the employer or the employee. The primary distinction is employer-based. Different rates apply to large and small employers. A *large employer* is an enterprise with annual gross sales of at least $500,000, excluding excise taxes.[265] A *small employer* is an enterprise with annual gross sales that are less than $500,000, excluding excise taxes.[266] The minimum wage rate applicable to large employers is $10.85 per hour, and the rate applicable to small employers is $8.85 per hour.[267] Annually, on January 1, the state adjusts its minimum wage rates. However, beginning January 1, 2025, one rate will apply to all employers, which will be the "large" employer rate adjusted for inflation.

#### 3.3(b)(ii) *Tipped Employees*

In Minnesota, employers are prohibited from taking a tip credit.[268]

#### 3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

The following categories of workers are not considered *employees* for purposes of the Minnesota minimum wage provisions:

- two or fewer specified individuals employed at any given time in agriculture on a farming unit or operation who are paid a salary;
- 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 one and one half times the state minimum wage per week;
- an individual under 18 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;
- an individual under 18 employed as a corn detasseler;
- any staff member employed on a seasonal basis by an organization for work in an organized resident or day camp;
- any individual employed on a seasonal basis in a carnival, circus, fair, or ski facility;
- any individual employed in a *bona fide* executive, administrative, or professional capacity, or a salesperson who conducts no more than 20% of sales on the employer's premises;
- any individual who renders service gratuitously for a nonprofit organization;
- 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;

[265] MINN. STAT. § 177.24(1)(a)(1).

[266] MINN. STAT. § 177.24(1)(a)(2).

[267] MINN. STAT. § 177.24(1)(b).

[268] MINN. STAT. § 177.24(2).

- 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;
- any individual employed by a political subdivision who is ineligible for membership in the state Public Employees Retirement Association;
- any driver employed by an employer engaged in the business of operating taxicabs;
- any individual engaged in babysitting as a sole practitioner;
- any individual under 18 working less than 20 hours per workweek for a municipality as part of a recreational program;
- any individual employed by the state as a natural resource manager;
- any individual in a position for which the U.S. Department of Transportation has power to establish qualifications and maximum hours of service under the federal Motor Carrier Act;
- any individual employed as a seafarer as defined under the FLSA, including but not limited to pilots, sailors, engineers, radio operators, firefighters, security guards, pursers, surgeons, cooks, and stewards;
- any individual employed by a county in a single-family residence owned by a county home school 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; or
- 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.[269]

Minors in Minnesota receive a different minimum wage rate from adults. Large employers, as defined in **3.3(b)(i)**, must pay minors under age 18 at least a subminimum wage of $7.75.[270] Further, both large and small employers may pay individuals under age 20 a training wage of $7.75 for the first 90 days of employment.[271]

Additionally, a separate wage rate may be applied to certain hotels, motels, lodging establishments, and resorts that hire individuals on a summer work travel exchange visitor program nonimmigrant visa ("J visa").[272]

Finally, an employer may pay certain employees with a disability a subminimum wage of not less than 50% of the state minimum wage if the employer obtains a permit from the Labor Standards Division of the Minnesota Department of Labor and Industry.[273] However, an employer may not pay subminimum

[269] MINN. STAT. § 177.23(7).

[270] MINN. STAT. § 177.24(1)(e).

[271] MINN. STAT. § 177.24(1)(c).

[272] MINN. STAT. § 177.24(1)(d).

[273] MINN. R. 5200.0030(1).

 

wage if the individual performs the same work as a person without a disability with similar experience and skill.[274]

### 3.3(b)(iv) *Local Minimum Wage Ordinances*

Some municipalities in Minnesota have set their own local minimum wage rates. Employers doing business in these jurisdictions must be aware of their overlapping compliance obligations with respect to the state and local minimum wage laws.

The Minneapolis Minimum Wage Ordinance[275] requires that covered employees working in the city be paid a local minimum wage, which originally differed based on whether an employer had more than 100 (*large employers*), or 100 or fewer (*small employers*), employees, but as of July 1, 2024 applies to all employers, regardless of size. Tipped employees must be paid the full Minneapolis minimum wage. However, during the first 90 days of employment, an employer can pay an employee under the age of 20 years who is employed in a city-approved training or apprenticeship program not less than 85% percent of the minimum wage rate, rounded up to the nearest nickel. The minimum wage is $15.57 per hour. Annually, on January 1, the minimum wage will be increased based on changes to the consumer price index, *e.g.*, on January 1, 2025 it will increase to $15.97 per hour. The ordinance also includes posting and record-keeping requirements.

The Saint Paul Minimum Wage Ordinance[276] requires that covered employees working in the city be paid a local minimum wage, which differs based on whether an employer employs more than 10,000 persons (*macro business*), more than 100 persons (*large business*), 100or fewer persons (*small business*), or five or fewer persons (*micro business*). Tipped employees must be paid the full Saint Paul minimum wage. However, employees under the age of 20 years who are employed in a city-approved youth-focused training or apprenticeship program can be paid 85% of the city minimum wage for small business rounded up to the nearest nickel. Additionally, employees who are 14-17 years of age can be paid 85% percent of the city minimum wage for small employers and rounded to the nearest nickel during their first 90 days after the date of hire.

- The minimum wage for macro and large businesses is $15.57 per hour. Annually, on January 1, the minimum wage will be increased based on changes to the consumer price index, *e.g.*, on January 1, 2025 it will increase to $15.97 per hour.
- The minimum wage for small business is $14.00 per hour, which will increase on July 1 to: $15.00 (2025). Beginning on July 1, 2026, small businesses must pay the macro and large business rate.
- The minimum wage for micro business is $12.25 per hour, which will increase on July 1 to: $13.25 (2025); $14.25 (2026); $15.00 (2027). Beginning on July 1, 2028, micro businesses must pay the macro and large business rate.

The ordinance also includes annual notice and record-keeping requirements. For employers that provide employee handbooks, the annual notice must be included in the handbook.

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[274] MINN. R. 5200.0040.

[275] MINNEAPOLIS, MN CODE §§ 40.330 *et seq*. The Minnesota Supreme Court held the Minneapolis Minimum Wage Ordinance was not preempted by state law. *Graco v. Minneapolis*, 937 N.W.2d 756 (Minn. 2020).

[276] SAINT PAUL, MN CODE §§ 224.01 *et seq*.

 

### 3.3(c) *State Guidelines on Overtime Obligations*

Minnesota employers that are not covered by the FLSA must pay one-and-one-half times the employee's regular rate for all hours worked over 48 in a workweek.[277]

### 3.3(d) *State Guidelines on Overtime Exemptions*

In Minnesota, the categories of workers listed in **3.3(b)(iii)** are likewise not considered *employees* for purposes of the state overtime requirements.[278] In addition, the overtime requirements do not apply to those employed as sugar beet hand laborers on a piece-rate basis,[279] employees who are employed to construct on-farm silos or install other equipment on a unit or piece-rate basis,[280] employees of air carriers subject to the provisions of title II of the federal Railway Labor Act,[281] certain health care employees working an alternative workweek schedule,[282] and certain employees in the motor vehicle sales industry.[283]

Minnesota law also exempts white collar employees, certain sales employees, and a few other categories of employees from the overtime requirements. Note that unlike some other states, Minnesota law does not include an express exemption for computer employees, although such employees may fall under one of the white collar exemptions if the employment meets all of the requirements.

Before turning to specific exemptions, it is important to reiterate that federal wage and hour laws do not preempt state laws[284] and that the law most beneficial to the employee will apply. Therefore, even if an employee meets one of the exemptions discussed below under either federal or state law, if the employee does not meet the requirements of the other, including the salary thresholds, then the employee will not qualify as exempt.

### 3.3(d)(i) *Executive Exemption*

Under Minnesota law, an employee is covered by the executive exemption if the employee meets either of the following two tests.

**Executive Test I.** The employee must:

- receive at least $250 per week in salary;
- manage the enterprise or a recognized department or subdivision thereof; and
- customarily direct the work of two or more other employees.[285]

**Executive Test II.** The employee must:

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[277] MINN. STAT. § 177.25(1).

[278] MINN. STAT. § 177.23(7).

[279] MINN. STAT. § 177.25(1).

[280] MINN. STAT. § 177.25(4).

[281] MINN. STAT. § 177.25(5).

[282] MINN. STAT. § 177.25(2).

[283] MINN. STAT. § 177.25(3).

[284] 29 U.S.C. § 218(a).

[285] MINN. R. 5200.0190, 5200.0211.

- receive at least $155 per week in salary;
- manage and supervise a department of at least two other full-time employees;
- have authority to hire or fire, or suggest changes in employees' status;
- regularly exercise discretionary powers; and
- either:
  - devote less than 20% of time worked, or 40% in retail or service establishments, to nonexempt work;
  - own 20% or more of the business; or
  - have sole charge of an independent or branch establishment.[286]

Employers covered under the FLSA should consult the federal provisions because currently the federal minimum salary requirement exceeds the state requirement.

### 3.3(d)(ii) *Administrative Exemption*

Under Minnesota law, an employee is covered by the administrative exemption if the employee meets either of the following two tests.

Administrative Test I. The employee must:

- receive at least $250 per week in salary or fee;
- either:
  - perform office or nonmanual work directly related to management policies or general business operations; or
  - perform functions in the administration of a school system or subdivision thereof, in work directly relating to academic instruction; and
- regularly exercise discretion or independent judgment.[287]

Administrative Test II. The employee must:

- receive at least $155 per week in salary or fee;
- either:
  - perform office or nonmanual work directly related to business operations or management policies; or
  - administer an educational system or subdivision thereof in work relating to academic instruction;
- regularly exercise discretion and independent judgment and makes important decisions;
- either:

[286] MINN. R. 5200.0190, 5200.0211.

[287] MINN. R. 5200.0200, 5200.0211.

- directly assist the owner or a *bona fide* executive or administrative employee;
- perform supervised work only along lines requiring special training or experience; or
- execute special assignments; and

- devote less than 20% of time worked, or 40% in retail or service establishments, to nonexempt work.[288]

Employers covered under the FLSA should consult the federal provisions because currently the federal minimum salary requirement exceeds the state requirement.

### 3.3(d)(iii) *Professional Exemption*

Under Minnesota law, an employee is covered by the professional exemption if the employee meets either of the following two tests.

Professional Test I. The employee must:

- receive at least $250 per week in salary or fee;
- either:
  - perform work requiring advanced knowledge in a field of science or learning;
  - perform work as a teacher in the activity of imparting knowledge; or
  - perform work requiring invention, imagination, or talent in a recognized field of artistic endeavor; and
- consistently exercise discretion and judgment.[289]

Professional Test II. The employee must:

- receive at least $170 per week in salary or fee;
- either:
  - perform work requiring advanced knowledge in a field of learning customarily acquired by prolonged specialized intellectual study, not a general academic education, an apprenticeship, or training in routine mental or physical processes;
  - perform original work dependent on the person's own creativeness in a recognized field of artistic endeavor; or
  - is a certified teacher working as such or recognized as such in the school system where the person works.
- consistently exercise judgment and discretion;
- perform predominantly intellectual work so varied that the output cannot be standardized by time necessary for accomplishment; and

[288] MINN. R. 5200.0200, 5200.0211.

[289] MINN. R. 5200.0210, 5200.0211.

 

- devote less than 20% of the hours worked to activities not essential to the person's professional work.[290]

Employers covered under the FLSA should consult the federal provisions because currently the federal minimum salary requirement exceeds the state requirement.

### 3.3(d)(iv) *Commissioned Sales Exemption*

Overtime provisions do not apply to an employee of a retail or service establishment if:

- the employee's regular rate of pay exceeds 1.5 times the state minimum wage; and
- more than half the compensation for a representative period of not less than one month represents commissions on goods or services.[291]

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a *bona fide* commission rate are deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.[292]

### 3.3(d)(v) *Outside Sales Exemption*

Overtime provisions do not apply to "a salesperson who conducts no more than 20 percent of sales on the premises of the employer."[293] A *salesperson* is defined as "one who makes sales of, or obtains orders or contracts for, materials, services, or the use of facilities for which payment will be made."[294] Incidental deliveries, collections, and other nonsales or nonsolicitation work directly related to the primary sales duties is considered salesperson work.[295]

An outside salesperson is:

- hired for the express purpose of performing such duties away from the employer's place(s) of business; and
- conducts no more than 20% of sales on those premises. The hours of nonoutside sales work may not exceed 20% of the hours worked by employees who are not outside salespersons.[296]

## 3.4 Meal & Rest Period Requirements

### 3.4(a) *Federal Meal & Rest Period Guidelines*

### 3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last

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[290] MINN. R. 5200.0210, 5200.0211.

[291] MINN. R. 5200.0170.

[292] MINN. R. 5200.0170.

[293] MINN. R. 5200.0220; *see also* MINN. STAT. § 177.23.

[294] MINN. R. 5200.0220.

[295] MINN. R. 5200.0220.

[296] MINN. STAT. § 177.23; MINN. R. 5200.0220.

 

30 minutes or more) are not considered "hours worked" and can be unpaid.[297] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[298]

### 3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

### 3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[299] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[300] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[301] Exemptions apply for smaller employers and air carriers.[302]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[303] Lactation is considered a related medical condition.[304] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[305] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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[297] 29 C.F.R. § 785.19.

[298] 29 C.F.R. § 785.18.

[299] 29 U.S.C. § 218d.

[300] 29 U.S.C. § 218d(b)(2).

[301] 29 U.S.C. § 218d(a).

[302] 29 U.S.C. § 218d(c), (d).

[303] 42 U.S.C. § 2000gg–1.

[304] 29 C.F.R. § 1636.3.

[305] 29 C.F.R. § 1636.3.

### 3.4(b) *State Meal & Rest Period Guidelines*

#### 3.4(b)(i) *State Meal & Rest Periods for Adults*

**Meal Periods.** Employees who work eight or more consecutive hours must be permitted "sufficient time to eat a meal."[306] *Bona fide* meal periods may be unpaid if the employee is completely relieved from duty while eating. A *bona fide meal period* is ordinarily 30 minutes or more, although a shorter period may be adequate under special conditions.[307] It is not necessary for the employer to allow employees to leave the premises, if the employee is otherwise completely freed from duties during a meal period.[308]

**Rest Periods.** Employees who work four consecutive hours must be permitted adequate time "to utilize the nearest convenient restroom." Rest periods of less than 20 minutes may not be deducted from hours worked.[309]

**Exempt Employees.** The meal and rest period requirements do not apply to exempt employees. Although the meal period statute does not define the term *employee*, the general definitions statute excludes "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."[310]

**Meal Period Waiver.** The meal period statute does not prohibit employers and employees from establishing breaks different from those provided in the statute via a collective bargaining agreement.[311] Otherwise, state law does not address waiver of meal periods.

#### 3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no independent meal or rest period requirements for minor employees in Minnesota—the adult standards apply.

#### 3.4(b)(iii) *State Enforcement, Remedies & Penalties*

Any employer found by the Labor Commissioner to have repeatedly or willfully violated the meal and/or rest provisions will be subject to a civil penalty up to $1,000 for each violation for each employee, and up to $5,000 for each repeated failure.[312] Violation of these provisions is also a misdemeanor.[313] Further, the statute affords employees a private right of action to enforce their rights under the statute.[314]

#### 3.4(b)(iv) *Lactation Accommodation Under State Law*

In Minnesota, individuals have a right to breast feed in any place they have a right to be with their children.[315] Moreover, employers must make reasonable efforts to provide a clean, private, and secure

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306 MINN. STAT. § 177.254.

307 MINN. R. 5200.0120.

308 MINN. R. 5200.0120.

309 MINN. STAT. § 177.253; MINN. R. 5200.0120.

310 MINN. STAT. § 177.23.

311 MINN. STAT. § 177.254.

312 MINN. STAT. § 177.27.

313 MINN. STAT. § 177.32.

314 MINN. STAT. § 177.27.

315 MINN. STAT. § 145.905.

room or other location in close proximity to the work area where the employee can express milk in privacy. The location must be shielded from view, free from intrusion from coworkers and the public, include access to an electrical outlet, and *cannot* be a bathroom or a toilet stall.[316] Note that employers are held harmless if reasonable effort has been made.[317]

An employer must also provide reasonable break times each day to an employee who needs to express breast milk for the employee's infant child, and the employer cannot reduce an employee's compensation for time used for the purpose of expressing milk. The break time may run concurrently with any break time already provided to the employee.[318]

Employers cannot retaliate against employees for asserting their rights under the law.[319] Employers must inform employees of the lactation accommodation rights under this law: (1) at the time of hire; (2) when an employee inquires about or requests parental leave; and (3) in the employee handbook, if the employer provides an employee handbook to its employees. Information must be provided in English and the primary language of the employee as identified by the employee.[320]

## 3.5 Working Hours & Compensable Activities

### 3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[321] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[322]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see **LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS**.

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316 MINN. STAT. § 181.939(b).

317 MINN. STAT. § 181.939(b).

318 MINN. STAT. § 181.939(a)..

319 MINN. STAT. § 181.939(d).

320 MINN. STAT. § 181.939.

321 The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

322 *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

 

### 3.5(b) *State Guidelines on Working Hours & Compensable Activities*

In Minnesota, the minimum wage must be paid for all hours worked. *Hours worked* include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with their employment or must remain on the premises until work is prepared or available. Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee's own purposes, are not hours worked.[323] There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Minnesota law addresses the compensability of on-call time and travel time.

**On-Call Time.** Under Minnesota law, if an employee is required to remain on the employer's premises or so close to the premises that the employee cannot use the time effectively for the employee's own purposes, the time spent being on-call is compensable. If, however, an employee is merely required to leave word at the employee's home or with the employer where the employee may be reached, but is not required to remain on or near the employer's premises, the time spent being on-call is not compensable.[324]

**Travel Time.** While Minnesota law does not address travel time generally, statutory provisions provide that time spent in rideshare arrangements, whether or not furnished by the employer, is not compensable.[325]

## 3.6 Child Labor

### 3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[326] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[327] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

[323] MINN. R. 5200.0120.

[324] MINN. R. 5200.0120.

[325] MINN. STAT. §§ 169.011, 177.251.

[326] 29 C.F.R. §§ 570.36, 570.50.

[327] 29 C.F.R. § 570.6.

### 3.6(b) *State Guidelines on Child Labor*

The Minnesota Child Labor Standards Act generally provides that minors under age 18 cannot work in any occupation the state labor department deems particularly hazardous for minors or detrimental to their well-being.

### 3.6(b)(i) *State Restrictions on Type of Employment for Minors*

**General Restrictions.** Minnesota's child labor standards place restrictions on the types of jobs and hours minors may work. Table 9 summarizes the state restrictions on type of employment by age.

**Table 9. State Restrictions on Type of Employment by Age**

| Age Range | Restrictions |
|---|---|
| **Under Age 18** | *Minors under age 18 cannot work in the following occupations, positions or establishments:*<br>• places where chemicals, compounds dusts, fumes, vapors, gases, or radioactive materials are present;<br>• places explosives are manufactured, handled, stored, or fired;<br>• logging;<br>• lumber, paper, lath, saw, shingle, or cooperage stock mills;<br>• mines, quarries, sand or gravel pits;<br>• construction;<br>• ice harvesting operations;<br>• work on commercial boats or vessels;<br>• operation of power-driven machinery;<br>• elevators or hoisting apparatus;<br>• a driver of a motor vehicle or an outside helper thereon;<br>• railway brake tenders, firefighters, engineers, drivers or conductors;<br>• lifeguards (subject to exceptions);<br>• aerial acts, weight-lifting, rope walking, etc.;<br>• operating, assembling or dismantling amusement park rides;<br>• window washing, wall cleaning, painting, or other building maintenance or repairs occupations where the repair is higher than 12 feet from the ground;<br>• oxyacetylene or oxyhydrogen welding; and<br>• other hazardous occupations.[328] |
| **Under Age 16** | *In addition to the under age 18 restrictions, minors under age 16 cannot work in the following occupations, positions or establishments:*<br>• airport landing strips and taxi or maintenance aprons;<br>• loader or launchers for skeet and trap shooting;<br>• lifting, carrying or caring for hospital or nursing home patients;<br>• welding;<br>• operating or assisting in the operation of machinery, including sidewalk type snow blowers and other power-driven lawn and garden equipment, meat slicers, and bakery machinery; |

[328] MINN. STAT. § 181A.04; MINN. R. 5200.0910, 5200.0930.

| Table 9. State Restrictions on Type of Employment by Age | |
|---|---|
| **Age Range** | **Restrictions** |
| | • oiling, cleaning, or maintaining any power-driven machinery;<br>• in walk-in meat freezers or meat coolers (does not prohibit occasional entrance to such areas which is incidental to the occupation);<br>• agricultural occupations the U.S. Labor Secretary finds hazardous for minors under age 16;<br>• manufacturing;<br>• commercial warehouses; or<br>• car washes, to attach or detach cars from mechanized conveyor lines, or operate or contact cars while connected.[329] |
| **Under Age 14** | Minors under age 14 cannot be employed, subject to limited exceptions.[330] |

**Restrictions on Selling or Serving Alcohol.** In Minnesota, minors under age 18 cannot work in establishments where alcohol is served or consumed, nor can they serve or sell alcohol in a retail liquor establishment.[331] Moreover, minors under age 18 cannot work where alcohol or 3.2% malt liquors are served or consumed, or in any tasks involving serving, dispensing, or handling of alcohol that is consumed on the premises except that minors aged 16 or older can be employed:

- at restaurants, hotels, motels, or resorts where alcohol is incidental to food service or preparation, if employed as a busboy, dishwasher, or host; and
- as a busboy, dishwasher, host, waiter or waitress, in rooms or areas where the presence of 3.2% malt liquor is incidental to food service or preparation.[332]

Minors are not prevented from working at tasks which are not prohibited by law in establishments where alcohol is sold, served, dispensed, or handled in rooms or areas where no alcohol is consumed or served.[333]

### 3.6(b)(ii) *State Limits on Hours of Work for Minors*

In Minnesota, minors under age 18 who attend high school cannot work:

- after 11:00 P.M. on nights preceding school days, or after 11:30 P.M. with a parent or guardian's written permission; or
- before 5:00 A.M. on school days, or before 4:30 A.M. with a parent or guardian's written permission.[334]

Minors aged 14 or 15 cannot work:

[329] MINN. R. 5200.0920, 5200.0930, and 5200.0940.

[330] MINN. STAT. §§ 181A.04, 181A.07.

[331] MINN. STAT. § 181A.04; MINN. R. 5200.0910.

[332] MINN. STAT. § 181A.115.

[333] MINN. STAT. § 181A.115.

[334] MINN. STAT. § 181A.04.

- more than eight hours in a 24-hour period;
- more than 40 hours per week;
- between 9:00 P.M. and 7:00 A.M.; or
- during school hours.[335]

Special rules apply to minors employed in agricultural operations, entertainers and models, newspaper carriers, and youth athletic program referees.[336]

### 3.6(b)(iii) *State Child Labor Exceptions*

Minnesota's child labor laws do not apply to:

- minors who have reached age 17 and have graduated from high school;
- minors performing employment tasks which do not require being in or entering the immediate area of the hazardous operation, equipment, or materials;
- minors in approved training programs;
- minors working for a corporation totally owned by one or both parents in which the daily corporate business is supervised by the parent(s);[337]
- minors employed to do home chores, to babysit, or employed by a parent.[338]

The minimum age provisions do not apply to:

- minors 12 years of age or older employed in corn detassling and agricultural operations;
- minors employed as actors, models, or performers;
- newspaper carriers; or
- youth athletic program referees.[339]

Additionally, the Commissioner of the Department of Labor and Industry may grant exemptions from any provisions of the Minnesota child labor provisions for an individual minor if the Commissioner finds that such an exemption would be in the best interest of the minor involved.[340]

### 3.6(b)(iv) *State Work Permit or Waiver Requirements*

In Minnesota, age certificates are issued by minors' school superintendents. Employers must obtain proof of age for employees or prospective employees under age 18 by requiring them to submit an age certificate, a copy of their birth record or driver's license, or a Form I-9.[341]

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[335] MINN. STAT. § 181A.04.

[336] MINN. STAT. § 181A.07.

[337] MINN. R. 5200.0930.

[338] MINN. STAT. § 181A.07(4).

[339] MINN. STAT. § 181A.07.

[340] MINN. STAT. § 181A.07(5).

[341] MINN. STAT. § 181A.06.

Minors under age 16 who want to work on school days during school hours must obtain an employment certificate. Employment certificates may be issued only for a specific position with a designated employer and only in the following circumstances:

- if a minor presents a signed statement from the prospective employer to demonstrate that the minor is not going to be engaged in a prohibited occupation;
- if a parent or guardian consents to the employment; and
- if the issuing officer believes the minor is physically capable of handling the job in question and further believes the minor's best interests will be served by permitting the minor to work.[342]

When employment terminates, an employer must return the employment certificate directly to the issuing officer with a notation showing the date of termination.[343]

### 3.6(b)(v) *State Enforcement, Remedies & Penalties*

Employers that violate the Minnesota Child Labor Standards Act or any rules promulgated pursuant to it are subject to a civil fine. A violation of the Act is generally a misdemeanor or gross misdemeanor.[344]

## 3.7 Wage Payment Issues

### 3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

### 3.7(a)(i) *Form of Payment Under Federal Law*

**Authorized Instruments.** Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[345]

**Direct Deposit.** Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[346]

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[342] MINN. STAT. § 181A.05.

[343] MINN. STAT. § 181A.05.

[344] MINN. STAT. § 181A.12.

[345] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[346] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[347]

**Payroll Debit Card.** Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[348] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[349]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[350] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under

[347] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[348] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[349] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[350] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

 

the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[351]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[352]

### 3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[353]

### 3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

### 3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

### 3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

### 3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[354] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and

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[351] 12 C.F.R. § 1005.18.

[352] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[353] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[354] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

 

clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[355] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[356] tools and equipment,[357] and business transportation and travel.[358] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[359]

### 3.7(a)(vii) *Wage Deductions Under Federal Law*

**Permissible Deductions.** Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[360]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[361]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[362]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[363]

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[355] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[356] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[357] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[358] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[359] 29 C.F.R. § 778.217.

[360] 29 C.F.R. § 531.38.

[361] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[362] 29 C.F.R. § 531.40.

[363] 29 C.F.R. § 531.40.

 

- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[364] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[365]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[366]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[367] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[368]

**Deductions During Non-Overtime v. Overtime Workweeks.** Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[369]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for

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[364] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[365] 29 C.F.R. § 825.213.

[366] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[367] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[368] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[369] 29 C.F.R. § 531.36.

 

qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[370]

**Prohibited Deductions.** The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[371]

### 3.7(b) *State Guidelines on Wage Payment*

#### 3.7(b)(i) *Form of Payment Under State Law*

**Authorized Instruments.** In Minnesota, wages may be paid in cash, negotiable check, direct deposit to the employee's choice of demand deposit account unless the employee objects, or electronic fund transfer to a payroll card account. Paychecks must be convertible into cash on demand at full face value.[372]

**Direct Deposit.** Mandatory direct deposit is not permitted in Minnesota. An employer may pay wages by direct deposit to the employee's choice of demand deposit account, unless the employee makes a written objection to the employer.[373]

**Payroll Debit Card.** Payroll debit cards are permitted for wage payment in Minnesota provided the following conditions are satisfied:

- the payroll card issuer has filed a notice with the state labor department containing the entity's name, address, and telephone number;
- the wages paid to an employee's payroll card account must be owned by the employee;
- the employee must be allowed to withdraw by a free transaction the employee's entire net pay on and after the employee's regular payday;
- the employer must provide written disclosures, in plain language, of all the employee's wage payment options and state the terms and conditions of the payroll card account, including:
  - all of the conditions required to be met by the employer and payroll card issuer under Minnesota law; and
  - a complete itemized list of all fees that may be deducted by the employer, card issuer or third parties;
- the employee must consent in writing to payment to a payroll card account;
- the written consent must include the terms and conditions of the payroll card option and a copy of the signed written consent must be provided to the employee and retained by the employer;

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370 29 C.F.R. § 531.37.

371 U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

372 MINN. STAT. §§ 177.23, 181.02.

373 MINN. STAT. § 177.23.

- the employer must provide the employee, upon request, one free transaction history each month that includes all deposits, withdrawals, deductions, or charges by an entity from or to the employee's payroll card account;
- the payroll card or payroll card account may not be linked to any form of credit;
- personal information generated by the employee's possession or use of a payroll card may only be used to administer the account unless the employee consents in writing to other use;
- if the employer offers a payroll card account option to employees in languages other than English, the written disclosure, consent, and all account agreements must be provided in that language;
- upon request, the employer must provide an employee with a form to change the method of wage payment (within 14 days of the employee's request, the employer should begin payment by the other permissible method);
- 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; and
- fees imposed by the employer or payroll card issuer that were not disclosed to the employee may not be deducted from the employee's payroll card account or charged to the employee.[374]

### 3.7(b)(ii) *Frequency of Payment Under State Law*

Generally,[375] in Minnesota an employer must designate a regular payday in advance, regardless of whether the employee requests payment at longer intervals. Wages earned –including salary, earnings, and gratuities – must be paid at least once every 31 days, and all commissions earned must be paid at least once every three months on a regular payday designated in advance by the employer, regardless of whether the employee requests payment at longer intervals. Moreover, the law provides a substantive right for employees to the payment of wages, including salary, earnings, and gratuities, as well as commissions, in addition to the right to be paid at certain times. Unless paid sooner, wages earned during the first half of the first 31-day pay period become due on the first regular payday following the first day of work.[376] Overtime pay must be paid by the payday immediately following the regular payday for the pay period in which it was earned.[377]

However, different wage payment requirements may apply, depending on the circumstances of employment. An employer employing a person to perform services on a project of a transitory nature (such as construction or maintenance of roads, highways, sewers or ditches, clearing land, or the production of forest products, or any other work that requires the employee to change the employee's place of abode) must pay the employee's wages every 15 days. In addition, the employer must make the payments at or near the place of employment.[378] In addition, special rules apply to public service

[374] MINN. STAT. § 177.255.

[375] MINN. STAT. § 181.101. *See also* **2.1(b)** State Guidelines on Hire Documentation.

[376] MINN. STAT. § 181.101.

[377] MINN. R. 5200.0150.

[378] MINN. STAT. § 181.10.

corporations, which must pay their employees semi-monthly within 15 days of when the wages were earned.[379]

### 3.7(b)(iii) *Final Payment Under State Law*

Unless a collective bargaining agreement provides otherwise, when an employer discharges an employee, the wages and commissions actually earned and unpaid at discharge are immediately due and payable upon the employee's written demand. The demand does not need to state the precise amount of unpaid wages or commissions. Penalties can be imposed if the payment is not made within 24 hours after the demand.[380]

An employee who quits or resigns must be paid earned wages and commissions in full no later than the first regularly scheduled payday following the final date of employment. However, this does not apply to employees subject to a collective bargaining agreement with a different pay schedule.[381] If the first regularly scheduled pay date is fewer than five calendar days following the final day of employment, the employer may delay full payment until the second regularly scheduled payday, but in no case later than 20 calendar days following the final day of employment. Wages not paid within the required time period become immediately payable upon the employee's written demand. The demand does not need to state the precise amount of unpaid wages or commissions. Penalties will be imposed if the payment is not made within 24 hours after the demand.[382]

### 3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

At the end of each pay period, Minnesota employers must provide each employee with an earnings statement covering that pay period. The statement may be provided in writing or in electronic format. The earnings statement must include:

- the employee's name;
- the hourly rate of pay (if applicable);
- the total number of hours worked by the employee unless exempt from overtime requirements;
- the total amount of gross pay the employee earned during that pay period;
- a list of deductions made from the employee's pay;
- the net amount of pay after all deductions are made;
- the date on which the pay period ends;
- the employer's legal name as well as its operating name, if different from the legal name
- the rate or rates of pay (if applicable) and basis thereof, including whether the employee is paid by hour, shift, day, week, salary, piece, commission, or other method;
- allowances, if any, claimed for meals and lodging;

[379] MINN. STAT. § 181.08.

[380] MINN. STAT. § 181.13.

[381] MINN. STAT. § 181.14.

[382] MINN. STAT. § 181.14.

- the physical address of the employer's main office or principal place of business, and a mailing address if different;
- the employer's telephone number;[383]
- the total number of sick leave hours available for use; and
- the total number of sick leave hours used during pay period Employers may choose a reasonable system for providing the information regarding sick leave, including but not limited to listing information on or attached to each earnings statement or an electronic system where employees can access this information. If electronic, employers must provide access to a computer during working hours to review and print.[384]

Effective January 1, 2026:

- Any amount deducted by the employer under section 268B.14, subdivision 3 (family and medical leave premiums) and the amount paid by the employer based on the employee's wages under section 268B.14 subdivision 1.[385]

An employer that chooses to provide an earnings statement by electronic means must provide employees access to an employer-owned computer during their regular working hours to review and print earnings statements. An employer must provide earnings statements to employees in writing, rather than by electronic means, if the employer has received at least 24 hours' notice from an employee that the employee would like to receive earnings statements in written form. Once an employer has received notice from an employee that the employee would like to receive earnings statements in written form, the employer must comply with that request on an ongoing basis.[386]

### 3.7(b)(v) *Wage Transparency*

The Minnesota Women's Economic Security Act prohibits an employer from:

- requiring nondisclosure by an employee of the employee's wages as a condition of employment;
- requiring an employee to sign a waiver or other document that purports to deny an employee the right to disclose the employee's wages; or
- taking any adverse employment action against an employee for disclosing the employee's own wages, discussing another employee's wages that have been disclosed voluntarily, or retaliating against an employee for asserting rights guaranteed under this provision.[387]

An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this provision.[388]

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[383] MINN. STAT. § 181.032, as amended by H.B. 2.

[384] MINN. STAT. § 181.9447.

[385] MINN. STAT. §§ 181.032.

[386] MINN. STAT. § 181.032.

[387] MINN. STAT. § 181.172(a).

[388] MINN. STAT. § 181.172(c).

Notably, the statute does not create an obligation on any employer or employee to disclose wages. Further, an employee is not permitted, without the written consent of the employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law, or to disclose wage information of other employees to a competitor of their employer.[389]

### 3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

At the start of employment, employers must provide each employee written notification concerning various pieces of information, including but not limited to, the regularly scheduled payday, and the rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method, and the specific application of any additional rates. Additionally, an employer must provide the employee any written changes to such information before the date changes take effect.[390]

### 3.7(b)(vii) *Paying for Expenses Under State Law*

In Minnesota, there is no general obligation to indemnify an employee for business expenses. However, specific requirements exist concerning whether an employee may be required to pay for travel expenses, uniforms, tools, and equipment.

Where an employer is required under an agreement to pay or provide "benefits or wage supplements" to employees, the employer is guilty of a gross misdemeanor if it refuses to pay the amount owed within 30 days of the reimbursement coming due. *Benefits or wage supplements* includes expense reimbursements.[391]

**Travel Expenses.** An employer cannot make direct or indirect deductions for travel expenses in the course of employment, except those incurred traveling to and from an employee's residence and place of employment, if doing so would cause an employee's pay to fall below the minimum wage.[392] *Travel expenses* are "receipted out-of-pocket expenses for transportation . . . or an agreed upon allowance, whichever is greater."[393] An *indirect deduction* is "any recoupment or payment received by an employer by methods other than payroll deductions,"[394] *e.g.*, the aforementioned travel expenses. At termination, an employer must reimburse the full amount deducted, directly or indirectly, for travel expenses.

**Uniforms.** An employer cannot take direct or indirect deductions for 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, if doing so would cause an employee's pay to fall below the minimum wage.[395] Direct or indirect

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[389] MINN. STAT. § 181.172.

[390] MINN. STAT. § 181.032(d)(6), (e)-(f).Additional information must be provided. *See* **2.1(b)** State Guidelines on Hire Documentation.

[391] MINN. STAT. § 181.74.

[392] MINN. STAT. § 177.24. This provision applies only to nonexempt employees. Per MINN. STAT. § 177.23(7), exempt employees include white collar exempt employees and outside sales exempt employees.

[393] MINN. R. 5200.0090.

[394] MINN. R. 5200.0090.

[395] MINN. STAT. § 177.24.

deductions for up to the full cost of the uniform cannot exceed $50. At termination, an employer must reimburse the full amount deducted, directly or indirectly, for uniforms.

Special rules apply for licensed motor vehicle dealers. If a licensed motor vehicle dealer furnishes uniforms or clothing on an ongoing basis, the deduction cannot exceed the lesser of 50% of the dealer's reasonable expense or $25 per month, including nonhome maintenance.[396] In addition, a motor vehicle dealer does not have to reimburse the full amount deducted, directly or indirectly, for uniform or clothing maintenance. When reimbursement is made, an employer can require the employee to surrender any existing items for which the employer provided reimbursement. These provisions apply only to nonexempt employees. Exempt employees include white collar exempt employees and outside sales exempt employees.[397]

**Tools & Equipment.** Direct or indirect deductions for up to the full cost of equipment may not exceed $50. Direct or indirect deductions of the following cannot be made if doing so would cause an employee's pay to fall below the minimum wage:

- 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; or
- consumable supplies required in the course of that employment.[398]

At termination, an employer must reimburse the full amount deducted, directly or indirectly, for equipment or supplies. When reimbursement is made, an employer can require the employee to surrender any existing items for which the employer provided reimbursement. These provisions apply only to nonexempt employees. Exempt employees include white collar exempt employees and outside sales exempt employees.[399]

### 3.7(b)(viii) *Wage Deductions Under State Law*

**Permissible Deductions.** In Minnesota, an employer and employee can enter into a written contract to authorize payroll deductions for the following costs:

- union dues;
- life insurance premiums;
- hospitalization and surgical insurance, group accident and health insurance, and group term life insurance;
- group annuities;
- contributions to:
  - credit unions;
  - a community chest fund;
  - a local arts council;

[396] MINN. STAT. § 177.24.

[397] MINN. STAT. §§ 177.23(7), 177.24.

[398] MINN. STAT. § 177.24; MINN. R. 5200.0090.

[399] MINN. STAT. §§ 177.23(7), 177.24.

- a local science council;
- a local arts and science council;
- a Minnesota benefit association;
- a federally or state registered political action committee; or
- an employee stock purchase plan or savings plan for periods longer than 60 days, including Gopher State bonds.[400]

An employer can take a meal allowance credit toward the minimum wage only when certain conditions are satisfied. If practical or economic realities of the employment situation require employees to accept lodging owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging.[401]

A deduction for a loan to an employee is permitted if, prior to making a loan from the employer, the employee voluntarily authorizes in writing that the cost of the loan will be deducted from the employee's wages, at regular intervals or upon termination of employment.[402]

**Prohibited Deductions.** An employer cannot directly or indirectly deduct from wages for:

- lost or stolen property;
- damage to property; or
- the recovery of any other claimed employee indebtedness.[403]

However, an employer may make such deductions if, after the loss has occurred or the claimed indebtedness has arisen, the employee voluntarily provides written authorization for the deduction, or if a court holds the employee liable. The authorization must set forth the amount to be deducted during each pay period. A deduction cannot exceed the amount established by the state's garnishment or execution on wages laws (see **3.7(b)(ix)**).[404]

Any agreement that is contrary to these provisions is void. However, these provisions do not apply to the following:

- if the employment is governed by a collective bargaining agreement with a contrary provision;
- where the employer has established rules for employees who are commissioned salespeople, and the rules are used for purposes of discipline, by fine or otherwise, in cases where errors or omissions in performing their duties exist; or

[400] MINN. STAT. § 181.06.

[401] MINN. R. 5200.0060, 5200.0070.

[402] MINN. STAT. § 181.79.

[403] MINN. STAT. § 181.79.

[404] MINN. STAT. § 181.79.

- in cases where an employee, prior to making a purchase or loan from the employer, voluntarily authorizes in writing that the cost of the purchase or loan shall be deducted from the employee's wages, at regular intervals or upon termination of employment.[405]

In addition, an employer cannot make direct or indirect deductions from the minimum wage for:

- money or merchandise shortages;
- purchase or rental of uniforms or nonhome maintenance of uniforms;
- consumable supplies (materials required to perform job duties that are used up in the course of employment);
- travel expenses (receipted out-of-pocket expenses for transportation, meals, and lodging, or an agreed-upon allowance, whichever is greater);
- spoilage, breakage, or other damage;
- cash shortages or losses resulting from omissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery; or
- fines for disciplinary purposes.[406]

### 3.7(b)(ix) *Wage Assignments & Wage Garnishments*

**Orders of Support.** An employer, upon receipt of an income withholding order from a Minnesota child support agency or a court, is deemed bound by the order and must initiate withholding no later than the first pay period that occurs 14 days following the date the employer receives the notice.[407]

The employer must withhold from the employee's paycheck the amount specified in the income withholding order and must remit payment to the designated child support agency within seven business days from the date the employer pays the employee the remainder of the income.[408] The employer must include with the payment the employee's Social Security number, the case type indicator assigned, and the date on which the employer paid the employee the remainder of the employee's paycheck.[409]

When an employee subject to an Income Withholding for Support (IWO) is eligible to receive a lump-sum payment in the amount of $500 or more, *e.g.*, for a performance bonus, the employer must provide notice to the child support enforcement agency 30 days in advance of paying the lump-sum amount to the employee. The agency will dictate how much of the lump-sum payment the employer must withhold and remit. In the event the agency does not respond to the employer's notice within 30 days, the employer may pay the lump-sum amount to the employee free and clear.[410]

Employers must be careful to comply with court-ordered income withholding for child support payments, and may cease to withhold income for child support only when an order terminating income

[405] MINN. STAT. § 181.79.

[406] MINN. R. 5200.0090.

[407] MINN. STAT. § 518A.53(5)(a).

[408] MINN. STAT. § 518A.53(5)(b).

[409] MINN. STAT. § 518A.53(5)(b).

[410] MINN. STAT. § 518A.53(11).

withholding is entered or when the public authority issues a notice to the employer terminating income withholding.[411] An employer is also prohibited from discharging, refusing to hire, or otherwise disciplining an employee due to the fact that the employee is subject to an income withholding order.[412]

Finally, Minnesota employers should note that child support garnishment impacts an employer's responsibilities with respect to final wages. An employer is required to withhold a lump-sum payment (including bonuses) owed to the employee exceeding $500 for 30 days after the due date if the employer has been served with a notice of income withholding to satisfy the employee's child support obligation.[413] Instead of paying the employee's wages upon termination, an employer must notify the child support enforcement agency listed in the income withholding order of the existence of the lump-sum obligation.[414] The statute expressly states that the withholding obligation supersedes any obligations (and accompanying penalties) that may exist under the provisions governing the timing of wage payment and the timing of payment of commissions, among others.[415]

**Debt Collection.** In Minnesota, an employer has specific obligations when served with a garnishment summons. The employer (called the "garnishee" in garnishment proceedings) must complete a garnishment disclosure form, return it to the creditor, and serve one copy on the debtor-employee.[416] The employer must disclose to the creditor exactly what it owes to the employee, whether it is money or other property.[417] Minnesota law requires that the creditor serve detailed forms to the employer. The disclosure form provides explicit instructions to the employer regarding what information must be disclosed and tells the employer how to calculate the portion of the employee's earnings that are subject to garnishment.[418]

Minnesota law imposes strict requirements on the percentage of each paycheck that can be garnished from an employee.[419] In most cases, a garnishment summons served on an employer will seek wages, because that is ordinarily the only indebtedness the employer has to the employee. Consequently, employers are advised to take care in filling out disclosure forms and calculating the portion of wages that is nonexempt and subject to garnishment.

After completing the garnishment disclosure form, employers have two other distinct obligations. First, employers must retain all nonexempt disposable earnings, indebtedness, money, or other property, up to 110% of the amount sought by the garnishment summons.[420] If the employer acts in good faith in retaining nonexempt earnings, no debtor, creditor, or other person may later hold the employer liable for wrongful retention of money or property.[421] Second, the employer must remit and deliver the

[411] MINN. STAT. § 518A.53(13), (14).

[412] MINN. STAT. § 518A.53(5)(c).

[413] MINN. STAT. § 518A.53(11).

[414] MINN. STAT. § 518A.53(11).

[415] MINN. STAT. § 518A.53(11).

[416] MINN. STAT. § 571.78(1).

[417] MINN. STAT. § 571.75(1).

[418] MINN. STAT. § 571.75(2).

[419] MINN. STAT. § 571.922.

[420] MINN. STAT. § 571.78(2).

[421] MINN. STAT. § 571.73(2).

 

garnished, nonexempt earnings, money, or other property creditor upon levy, written authorization of the debtor, court order, or other law that may require such delivery.[422]

If an employer fails to serve the required disclosures, the court can render a judgment against the employer for the amount of the creditor's judgment against the employee, plus costs not to exceed 110% of the total amount sought by the garnishment.[423] Practically speaking, an employer may end up paying for a debt owed by one of its employees. This can be avoided by making the required disclosures promptly and delivering the garnished earnings, money, or other property to the creditor, as the law requires. In addition, Minnesota law prohibits discharge or discipline against an employee because the employee's wages are being garnished.[424]

### 3.7(b)(x) *State Enforcement, Remedies & Penalties*

**Minimum Wage, Overtime & Wage Payment.** If an employer does not pay an employee's earned wages in compliance with the state wage payment provisions, the Minnesota Department of Labor and Industry (MDLI) may demand payment on the employee's behalf. If payment is not made within 10 days of demand, the MDLI may collect the wages along with a penalty in the amount of the employee's average daily earnings for each day beyond the ten-day limit following the demand, not to exceed 15 days' worth of penalties. The MDLI must pay the money collected to the employee concerned.

The MDLI may order the employer to cease and desist from such wage payment violations. Additionally, the MDLI will order payment of the full amount of wages, gratuities, and/or overtime compensation owed, less any amounts actually paid, as well as the liquidated damages described above.[425] The MDLI may also impose a $1,000 penalty for each violation for each employee if it finds that the employer has repeatedly or willfully violated the Minnesota wage and hour laws, and may also order the employer to reimburse the state for the costs of the litigation and hearing.[426] If reimbursement would create an extreme financial hardship, the MDLI may limit the employer's payment.[427] Any action taken by the MDLI does not prevent an employee from filing their own action to recover wages due.[428]

Individual employees may file suit to recover damages for an alleged violation of the wage and hour laws.[429] An employer found to have violated the minimum wage provisions may be liable to the employee for:

- the full amount of the wages, gratuities, and overtime compensation, less any amount actually paid to the employee;[430]

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[422] MINN. STAT. § 571.78.

[423] MINN. STAT. § 571.82.

[424] MINN. STAT. § 571.927(1).

[425] MINN. STAT. § 177.27(7).

[426] MINN. STAT. § 177.27(7). Civil penalties may be imposed even if an aggrieved employee is not entitled to compensatory damages. *See Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 615 (Minn. 2008).

[427] MINN. STAT. § 177.27(7).

[428] MINN. STAT. § 181.101.

[429] MINN. STAT. § 177.27(8).

[430] *But see Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309 (Minn. Ct. App. 2011), *cert. denied*, 2011 Minn. LEXIS 172 (Minn. Mar. 29, 2011) (concluding that overtime compensation paid under the FLSA is taken into account in determining overtime due under state law).

 

- an additional amount equal to the amount of the employer's liability as liquidated damages; and
- attorneys' fees and costs.[431]

The employee, however, must pay the employer's costs, not including attorneys' fees, for an unsuccessful lawsuit brought against the employer to recover additional wages.[432]

An employer that violates the wage deduction provisions may be held liable in a civil action brought by the employee for twice the amount of the deduction or credit taken.[433]

**Wage Transparency.** An employee may bring a civil action against an employer for a violation of the employer's obligations or restrictions under the wage transparency provisions of the Women's Economic Security Act, except those relating to employee handbooks. If a court finds that an employer has violated any of the specified obligations or restrictions, the court may order reinstatement, back pay, restoration of lost service credit, if appropriate, and the expungement of any related adverse records of an employee who was the subject of the violation(s).[434]

## 3.8 Other Benefits

### 3.8(a) *Vacation Pay & Similar Paid Time Off*

#### 3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[435] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[436] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[437]

#### 3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Minnesota law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. Historically, an employee's entitlement to vacation or similar benefits in Minnesota has been determined by reference

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[431] MINN. STAT. § 177.27(8), (10).

[432] MINN. STAT. § 181.14.

[433] MINN. STAT. § 181.79.

[434] MINN. STAT. § 181.172(e).

[435] 29 U.S.C. § 1002.

[436] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[437] 490 U.S. 107, 119(1989).

 

to a written policy or other contract established by the employer.[438] Consequently, if an employer creates a vacation plan with certain conditions, and the employee meets all the conditions for earning that vacation time, the benefit becomes vested.[439] Once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively.[440] It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

Because vacation pay is a matter of contract or employer policy in Minnesota, "use-it-or-lose-it" provisions and caps on accrual are permissible.[441] Minnesota vacation policies can require forfeiture of vacation upon termination.[442] Minnesota law does not provide for employee vacation pay as of right, and though vacation pay constitutes "wages" within the meaning of the state wage and hour laws, the provisions governing final wages are concerned with the timing of final pay, not what must be included in final pay.[443]

At the start of employment, employers must provide each employee written notification concerning various pieces of information, including but not limited to, paid vacation, sick time, or other paid time off accruals and terms of use. An employer must keep of a copy of the notice signed by each employee acknowledging receipt thereof. The notice must be provided in English. If requested, an employer must provide the notice in the language requested by the employee. Additionally, an employer must provide the employee any written changes to such information before the date changes take effect.[444]

## 3.8(b) *Holidays & Days of Rest*

### 3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

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[438] *See Brown v. Tonka Corp.*, 519N.W.2d 474, 477(Minn. Ct. App. 1994).

[439] 519 N.W.2d at 477.

[440] *See, e.g.*, *Hall v. City of Plainview*, 954 N.W.2d 254 (Minn. 2021) (disclaimer provisions in employee handbook stating that the handbook's policies should not be construed as a contract did not allow the employer to refuse to pay out accrued PTO in accordance with the handbook's PTO policy).

[441] *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117 (Minn. 2007) (in dicta, the court noted that if it adopted a broader interpretation of the wage payment provisions as proposed by the plaintiff, the decision would have other consequences, *e.g.*, the legality of caps or use-it-or-lose-it clauses would be called into question, and that it did not believe the legislature intended the consequences of this interpretation).

[442] *Gardner v. Accend Servs.*, 2016 WL 3884354 (Minn. Ct. App. July 18, 2016); *Lee*, 741 N.W.2d 117 at 123; *Auge v. Fairchild Equip., Inc.*, 338 F. Supp. 3d 1071 (D. Minn. 2019), *rev'd on other grounds,* 982 F.3d 1162 (8th Cir. 2020).

[443] *Lee*, 741 N.W.2d at 126-28. *See also Hightower v. Cmty. Action P'ship of Ramsey & Wash. Ctys.*, 2023 WL 4199084 (Minn. Ct. App. June 26, 2023) (former employee not entitled to payout of unused PTO because the policy said that an employee was entitled to payout of unused PTO only if the employer terminated the employment contract and, here, the employee resigned. Additionally, although Minn. Stat. § 181.14 can include payment of accrued PTO, "the statute does not create an independent right to wages or accrued PTO. It is instead merely a timing statute that dictates when employers must pay wages that an employee otherwise has a right to receive.").

[444] MINN. STAT. § 181.032(d)(3), (e)-(f).Additional information must be provided. *See* **2.1(b)** State Guidelines on Hire Documentation.

 

### 3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Minnesota does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

### 3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

### 3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[445] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[446] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[447] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

### 3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Couples may register as domestic partners in several cities in Minnesota, including but not limited to Minneapolis, St. Paul, Duluth, and Rochester. However, state law does not address the issue of whether an employee's domestic partner would be considered an eligible dependent for purposes of employee benefits.

## 3.9 Leaves of Absence

### 3.9(a) *Family & Medical Leave*

### 3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

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[445] 29 U.S.C. § 1144.

[446] 29 U.S.C. § 1161.

[447] 29 U.S.C. § 1167(3).

- for the birth or placement of a child for adoption or foster care;[448]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[449]
- to take medical leave when the employee is unable to work because of a serious health condition;[450]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(j)(iv)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(j)(iv)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[451] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[452] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

### 3.9(a)(ii) *State Guidelines on Family & Medical Leave*

The Minnesota Parenting Leave Act is intended to provide parents with added flexibility to care for their children. Additionally, a state paid family and medical leave law will become **effective January 1, 2026**. Note that the Sick Leave Benefits for Care of Relatives Act sunset on January 1, 2024.

**Minnesota Parenting Leave Act**

**Coverage & Eligibility.** A *covered employer* under this statute includes a person or entity that employs one or more employees.[453] Employer includes individuals, corporations, partnerships, associations, nonprofit organizations, groups of persons, governmental bodies and subdivisions, and businesses or trusts. In this way, the Minnesota statute is broader than the FMLA, which only covers employers that employ 50 or more employees within a 75-mile radius of the worksite.[454] Thus, some mid-sized employers not covered by the FMLA may be covered by the Minnesota statute.

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[448] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[449] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[450] 29 C.F.R. §§ 825.112, 825.113.

[451] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[452] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[453] MINN. STAT. § 181.940(3) as amended by S.F. 3035 (Minn. 2023).

[454] 29 U.S.C. § 2611; 29 C.F.R. §§ 825.110, 825.111.

 

The term *employee* for the purpose of the Minnesota Parenting Leave Act means an individual who performs services for hire for an employer.[455]

**Purpose & Length of Leave.** The Minnesota Parenting Leave Act requires a covered employer to permit eligible employees to take up to 12 weeks of unpaid leave related to the birth or adoption of a child, or for a female employee for prenatal care, or incapacity due to pregnancy, childbirth, or related health conditions.[456] Eligible employees include those who are either: (1) the natural parent of the child; or (2) the adoptive parent of the child.[457] The statute does not place any further limitation on the amount of leave available to spouses who work for the same employer. Conceivably, each would be entitled to 12 weeks of leave. For employers covered by both the FMLA and the Minnesota statute, the two leaves may be counted concurrently.

**Employer Obligations.** Employers must restore employees to their former position or a position of comparable duties, number of hours, and pay. The employer must continue to make coverage available during a leave under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents. However, the law does not require the employer to pay the costs of insurance or health care while the employee is on leave. **Effective August 1, 2024**, the employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the employee and their dependents. The employee must continue to pay their share of the costs.[458]

**Employee Rights & Obligations.** Employers may adopt reasonable policies governing the timing of requests for unpaid leave.[459] An employee returning from a leave lasting more than a month must notify their supervisor at least two weeks prior to the employee's return.[460]

**Minnesota Paid Family and Medical Leave**

The state's Paid Family and Medical Leave (PFML) program will provide eligible employees with up to 20 weeks of PFML per year.[461] The program will be administered by a new Family and Medical Benefit Insurance Division (the "Division") of the Department of Employment and Economic Development (DEED). Employers and employees will contribute to a state fund that will support the program.

**Covered Employers and Employees.** The new law applies to all employers regardless of their size, and regardless of the number of their employees that are located in Minnesota.

All Minnesota employees, with limited exceptions, will be eligible for PFML benefits if they meet the financial eligibility requirements under the law. Certain seasonal employees are excluded from coverage under the law. Additionally, self-employed individuals and independent contractors are excluded but may elect to purchase coverage under the program.

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[455] MINN. STAT. § 181.940(2) as amended by S.F. 3035 (Minn. 2023).

[456] MINN. STAT. §§ 181.940 to 181.944.

[457] MINN. STAT. § 181.941(1).

[458] MINN. STAT. § 181.941(4), as amended by S.B. 3852 (Minn. 2024).

[459] MINN. STAT. § 181.941(2).

[460] MINN. STAT. § 181.941(1).

[461] MINN. STAT. §§ 268B.01 *et seq.*; H.B. 2 (Minn. 2023).

 

To receive benefits, an employee must have earned at least 5.3% of the state average annual wage over their base period, defined as the most recent four completed calendar quarters before the employee's application for benefits. Currently, this amounts to annual earnings of about $3,500. The employee can aggregate wages earned from multiple employers to satisfy the financial eligibility test.

**Covered Reasons for Leave.** Covered leave falls into two categories: (1) leave for the employee's own serious health condition; and (2) other reasons for leave, including family care, bonding, safety, or a qualifying military exigency, defined as follows:

*Bonding leave* is time off for a biological, adoptive, or foster parent to spend time with a child in connection with the birth, adoption, or placement of that child. Employees must take bonding leave within 12 months of the birth, adoption, or placement of the child, except when the child must remain in the hospital longer than the birthing parent, in which case the leave must end within 12 months after the child leaves the hospital. In adoption situations, employees may use bonding leave for various issues connected with the adoption process.

*Family care leave* is time off to care for a family member with a serious health condition or to care for a family member who is a military member.

*Safety leave* is time off because of domestic abuse, sexual assault, or stalking of the employee or a family member to seek medical attention, victim services, counseling, relocation, or legal advice.

*Qualifying exigency leave* is time off due to a military member's active-duty service or notice of active duty, including caring for the family member's child or dependent, making financial or legal arrangements, attending counseling, attending military events or ceremonies, spending time with the family member during a rest and recuperation leave or following return from deployment, or making arrangements after the death of a military member.

A *serious health condition* is a physical or mental illness, injury, impairment, condition, or substance use disorder that involves inpatient or outpatient care or continuing treatment or supervision by a health care provider involving various types of incapacity for a specified period of time as specified in the new law.

While the definition of family member is not as broad as that included in the state's Earned Sick and Safe Time law, the definition includes a spouse or domestic partner; sibling; grandchild; grandparent or spouse's grandparent; son- or daughter-in-law; child (including biological, adopted, or foster child, stepchild, child of a domestic partner or child to whom the applicant stands in loco parentis, is a legal guardian, or is a de facto custodian); parent or legal guardian of the applicant (including biological, adoptive, de factor, foster, or step-parent, or legal guardian or individual who stood in loco parentis to the applicant when the applicant was a child); and an individual who has a personal relationship with the applicant that creates an expectation and reliance that the applicant care for the individual without compensation, whether or not the applicant and the individual reside together.

Except for benefits for bonding leave, a claim for benefits must be based on a single qualifying event of at least seven calendar days. The days must be consecutive unless the leave is intermittent.

**Amount of Leave.** An employee may take up to 12 weeks of paid leave for their own serious health condition and up to 12 weeks of paid leave for bonding, family care, safety, or a qualifying exigency. However, employees are limited to an aggregate of 20 weeks of paid leave in a benefit year. In other

 

words, if an employee has used the full 12 weeks of serious health care leave, the employee could take only eight more weeks for the other types of leave. Conversely, if an employee took 12 weeks of bonding and family care leave, the employee would be limited to 8 weeks of serious health care leave.

An employee may take leave intermittently for any of the covered reasons under the law. However, an employer may limit intermittent use of leave to 480 hours in any 12-month period. The employee would be able to take any remaining leave continuously.

**Benefit Amount.** Employees will not receive their full wages for PFML. The state will apply a maximum weekly benefit amount computed by statute. An employee's weekly benefit is calculated by applying the following percentage to the employee's average typical workweek and weekly wage during the high quarter of their base period:

- 90% of wages that do not exceed 50% of the state's average weekly wage; plus
- 66% of wages that exceed 50% but are less than 100% of the state's average weekly wage; plus
- 55% of wages that exceed 100% of the state's average weekly wage.

Benefits will be paid weekly. The weekly benefit amount will be prorated when:

- the employee works hours for wages;
- the employee uses paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment; or
- leave is taken intermittently.

An employee may use vacation pay, sick pay, or paid time off in lieu of PFML benefits if the employee is concurrently eligible. Such time off would be protected but would render the employee ineligible to receive PFML benefits from the state. Receipt of workers' compensation does not wholly render an employee ineligible to receive PFML benefits, but the state will reduce the amount of PFML benefits paid by the amount of the employee's workers' compensation payment. Employees may receive disability insurance payments in addition to PFML benefits when the employee is concurrently eligible for both. Disability insurance benefits may be offset by PFML benefits paid to the employee under a disability insurance policy.

An employer may choose to designate certain benefits such as salary continuation, vacation leave, sick leave, or other paid time off as a supplemental benefit payment, which can be used to "top off" the amount of PFML benefits received so that the employee receives their regular wage or salary. Employees may choose to use supplemental benefits concurrently with their PFML, but cannot be required to do so.

**Administration of Benefits.** To obtain benefits, an eligible employee must file an application and establish a benefit account with the new Division. Benefits will be paid from state funds, not directly by the employer. Any agreement between an employee and employer is not binding on the Division in determining whether the employee is entitled to benefits. The application may be filed up to 60 days before leave is taken. It must include certification supporting the request.

 

The Division will determine whether employees are eligible for PFML rather than the employer and will notify the employer of its determination regarding entitlement to benefits, although it appears the employer may have some ability to appeal a determination.

**Employee Notice Requirements.** The employee must provide at least 30 days' advance notice to the employer if need for leave is foreseeable. Otherwise, the employee must give notice as soon as practicable. The employee need only provide notice once, but the employee must advise the employer as soon as practicable if dates change. The employee must provide at least oral, telephone, or text message notice sufficient to make the employer aware of the need for leave and anticipated timing.

**Private Plans.** An employer may offer a private plan, so long as that plan provides benefits and protections that are the same as or greater than those provided under the public plan and is approved by the Division. A private plan can be self-insured or insured through a carrier. An employer with an approved private plan need not pay the tax premiums required by the statute, but it must pay a private plan approval and oversight fee. The employer must post notice of the private plan for its employees.

**Employer Premiums.** Employers must pay quarterly premiums to the family and medical benefit insurance account on the taxable wages paid to each employee. Beginning January 1, 2026, the employer premium rates will be:

- 0.7% for an employer participating in both family and medical benefit programs;
- 0.4% for an employer participating in only medical benefit programs with an approved private plan for the family benefit program; and
- 0.3% for an employer participating in only the family benefit program with an approved private plan for the medical benefit program.

Employers must pay at least half of the annual premiums. Employees, through a wage deduction, must pay the remaining premium not paid by the employer. Employers with fewer than 30 employees will pay a reduced amount, which the fund will absorb; employees at small employers will pay the same as those at larger employers.

**Reporting Requirements.** Employers must electronically submit a quarterly wage detail report to the state that includes information about employee wages and hours worked. Penalties apply for incomplete or incorrect information.

Employers must include information about amounts deducted and paid to employees for PFML on employees' wage statements each pay period.

**Notice, Posting, and Recordkeeping Requirements.** Within 30 days from the date an employee begins work, an employer must provide the new employee with written notice of certain benefits and administrative information regarding the paid family and medical leave program. For current employees, the employer must provide this same notice at least 30 days before collection of premiums begins. In addition, employers must post notice of the benefits available under the law in a conspicuous place on their premises. The notice must be in English and in each language other than English that is the primary language of five or more employees or independent contractors that work on the premises, if notice in that language is available from the state.

The law also requires employers to keep certain records regarding administration of the benefit program for their employees for four years.

**Benefit Continuation and Reinstatement.** The employer must maintain insurance under any group insurance policy, group subscriber contract, or health care plan for an employee and the employee's dependents as if the employee were not on leave. The employee must continue to pay the employee share of such benefits. The employee will be treated as if the employee continued to work for purposes of changes to benefit plans.

Upon return from PFML, an employee must be reinstated to the same position the employee held when the leave started or to an equivalent position with equivalent pay, benefits, terms and conditions of employment. However, the employee has no greater right to reinstatement or other benefits than if the employee had remained continuously employed. If an employee is laid off during PFML, the employer need not continue the leave, but the employer has the burden of proving the employee would have been laid off and not entitled to return to the job absent the PFML.

The employer must provide an employee who is no longer qualified for the position for certain reasons a reasonable opportunity to meet those conditions. A returning employee is also entitled to any unconditional pay increases the employee would have received. The employee may, but is not entitled to, accrue additional benefits or seniority during PFML. PFML will not be treated as a break in service for purposes of vesting and eligibility to participate in pension or other retirement plans.

**Enforcement and Penalties.** The statute prohibits retaliation: Employers must not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against employees for seeking, requesting, or obtaining PFML benefits or exercising other rights under the statute. Employers are also prohibited from obstructing or impeding an application for PFML leave or benefits. Employers may, however, require employees to comply with their usual requirements for requesting leave. The employer may also require the employee to provide a copy of the certification.

The employer may not require the employee to identify a replacement worker to cover the employee's work.

Violations are subject to a penalty of not less than $1,000 and not more than $10,000 per violation, payable to the employee. Employers may also be penalized for colluding with an employee to obtain benefits fraudulently.

Employees may sue in federal or state court to vindicate their rights under the statute. Remedies include pay damages, interest, liquidated damages for actions not in good faith, injunctive or equitable relief, and attorneys' fees and costs. The statute contemplates class relief.

**Effective Dates.** Workers may begin to use PFML benefits on January 1, 2026, at which time workers and employers also begin paying into the fund. Certain portions of the statute will be implemented before this date so the state can build the necessary infrastructure to administer it by the official start date.

### 3.9(a)(iii) *State Guidelines on Kin Care Leave*

The Minnesota Sick Leave Benefits for Care of Relatives Act was enacted in 2013 and sunset on January 1, 2024.[462]

## 3.9(b) *Paid Sick Leave*

### 3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[463] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

### 3.9(b)(ii) *State Guidelines on Paid Sick Leave*

As of January 1, 2024, statewide earned sick and safe time requirements will exist in Minnesota, in addition to pre-existing local requirements in Bloomington, , Minneapolis, and Saint Paul.[464] Directly below we summarize the state-level requirements, and further below the local requirements.

**Covered Employers, Employees, and Family Members**. All employers must provide earned sick and safe time to employees who they anticipate to work at least 80 hours in a year in Minnesota. However, the law does not apply to independent contractors, volunteer firefighters or paid on-call firefighters with a department charged with the prevention or suppression of fires within Minnesota, volunteer ambulance attendants, ambulance service personnel who serve in a paid on-call position, or individuals employed by a farmer, family farm, or a family farm corporation to provide physical labor on or management of a farm if the farmer, family farm, or family farm corporation employs the individual to perform work for 28 days or less each year. Additionally, represented building and construction industry employees and their employer may waive the law's requirements via a collective bargaining agreement that expressly references the law and clearly and unambiguously waives its application. The ability to waive requirements, at least temporarily, may also be available to certain individuals who provide services through a consumer support grant, consumer-directed community supports, or community first services and supports to a family member who is a participant.

Employees can use leave for personal reasons or to care for or assist a *family member* which includes an employee's, spouse's, or registered domestic partner's aunt or uncle, child, grandchild, grandparent, parent, niece or nephew, sibling, spouse or registered domestic partner. Additionally, a family member includes any other individual related by blood or whose close association with the employee is the equivalent of a family relationship. Finally, a family member also includes one person designated annually by the employee for whom they can use leave.

**Accrual and Carryover.** Employers who, under a paid time off policy or other paid leave policy, provide leave that may be used for the same purposes and under the same conditions as the law requires, and

[462] S.F. 3035 (Minn. 2023).

[463] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[464] Previously there was an ordinance in Duluth but it was repealed as of January 18, 2024. Duluth, MN Ordinance 23-062-O.

that meets or exceeds, and does not otherwise conflict with, the law's minimum standards and requirements need not provide additional earned sick and safe time. Note, however, that beginning January 1, 2025, the law appears to regulate in certain respects paid leave policies that are more generous than what the law requires. Specifically, concerning paid leave that exceeds the law's minimum requirements that employees can use for personal illness or injury – excluding short-term or long-term disability or other salary continuation benefits – the law requires that the benefit must meet or exceed most of the law's minimum standards and requirements except those concerning: when leave can be used; when accrual begins; accrual rate and caps; carryover and/or cash-out or frontloading in lieu thereof. For paid leave accrued before January 1, 2024 for personal illness or injury absences, an employer may require an employee who uses such leave to follow the written notice and documentation requirements in the employer's applicable policy or collective bargaining agreement as of December 31, 2023 in lieu of the law's requirements, provided that an employer does not require an employee to use leave accrued on or after January 1, 2024, before using leave accrued prior to that date.

Otherwise, when employment begins employees must accrue one hour of paid leave for every 30 hours worked; per the state labor department, accrual occurs in whole-hour units.[465] For accrual purposes the law deems exempt executive, administrative, professional, or outside sales employees to work 40 hours in each workweek unless their normal workweek include fewer hours, in which case they accrue leave according to their normal workweek. The law sets an annual accrual cap of 48 hours, and an overall accrual cap of 80 hours.

Unused leave carries over into the following year. To avoid carryover requirements, employers have two options at the beginning of the subsequent year. The first option is to cash-out unused leave and frontload 48 hours. The second option is to frontload 80 hours.

**Using Leave.** Minnesota allows employees to use leave as they accrue it – so employers cannot implement a waiting period – for personal reasons, or to care for or assist a family member, for the following "sick," "safe," or "other" reasons:

- mental or physical illness, injury, or other health condition of employee or family member;
- medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of employee or family member;
- preventive medical or health care of employee or family member;
- due to domestic abuse, sexual assault, or stalking of the employee or family member:
  - seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;
  - obtain services from a victim services organization;
  - obtain psychological or other counseling;
  - seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault, or stalking; or

[465] Minnesota Department of Labor & Industry, FAQS: Earned Sick and Safe Time (ESST), *available at* https://www.dli.mn.gov/business/employment-practices/faqs-earned-sick-and-safe-time-esst.

 

  - seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.
- need to make arrangements for or attend funeral services or a memorial, or address financial or legal matters that arise after the death of a family member;
- closure of the employee's place of business, or family member's school or place of care, due to weather or other public emergency (though, as of July 1, 2024, exceptions may be available to firefighters, licensed peace officers, 911 telecommunicators, correctional facility guards, or public employees holding a commercial driver's license whose preassigned or foreseeable work duties would require them to respond to the emergency or weather event);
- employee's inability to work or telework because the employee is: (1) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or (2) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employer has requested a test or diagnosis;
- health authorities having jurisdiction or by a health care professional determines that the employee's or family member's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease, whether or not the employee or covered relation has actually contracted the communicable disease.

The law does not contain an express cap on how much leave employees can use annually. Under the law, employees may use leave in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15-minute increments nor can the employer require use of leave in more than four-hour increments.

**Requesting, Verify, and Documenting Leave.** An employer that requires notice of the need to use leave must have, and provide to employees, a written policy containing reasonable procedures for employees to provide notice. If an employer does not provide a copy, it cannot deny leave use on that basis. For foreseeable absences, an employer may require up to seven days' advance notice. For unforeseeable absences, an employer may require notice as soon as practicable.

If an employee uses leave for more than three consecutive scheduled workdays, an employer may require reasonable documentation that leave was used for a covered reason. For business, school or place of care closures, an employer must accept an employee's written statement indicating that leave was used for a covered purpose. For absences connected to domestic abuse, sexual assault, or stalking, an employer must accept a court record or documentation signed by a volunteer or employee of a victims services organization, an attorney, a police officer, or an antiviolence counselor. If documentation cannot be obtained in a reasonable time or without added expense, then reasonable documentation may include a written statement from the employee indicating that the employee is using or used leave for a qualifying purpose. For all other absences, reasonable documentation may include a health care professional's signed statement indicating the need for leave. However, if the individual did not receive services from a health care professional or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, the employee can provide a written statement indicating that they used leave for a covered reason. Notably, the law allows employee statements to be written in their first language, and like other laws does not require

 

the statement to be notarized or in any particular format. Employers must treat this information as confidential – and certain medical information must be kept separate from an employee's personnel files – that they cannot disclose without employee consent, a court or agency order, or when federal or state law otherwise requires.

**Paying Leave**. When employees use leave, they must be paid the same base rate they normally earn, which cannot be less than the state or applicable local minimum wage. For employees paid on an hourly basis, this means the same rate received per hour of work. Salaried employees must receive the same rate guaranteed to them had they not taken leave. For employees paid solely on a commission basis, a piecework basis, on any basis other than hourly or salary, leave must be paid at a rate that is no less than the highest applicable minimum wage. If employees paid on an hourly basis receive multiple hourly rates, their paid leave rate of pay must equal what they would have been paid when leave was taken. However, the law provides that the "base" rate does not include commissions, shift differentials that are in addition to an hourly rate, premium payments for overtime work, premium payments for work on Saturdays, Sundays, holidays, or scheduled days off, bonuses, or tips.

**Prohibitions**. As a condition of using leave, an employer cannot require an employee to find a replacement worker to cover their hours. Under the law, an employer's absence control policy or attendance point system cannot count leave taken as an absence that may lead to or result in retaliation or other adverse action. The law says employers cannot discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against a person because they exercised or attempted to exercise rights protected under the law, including but not limited to, requesting or using leave, requesting a statement of accrued leave, informing any person of their potential rights, making a complaint or filing a lawsuit to enforce a right to leave, or participating in any manner in an investigation, proceeding, or hearing under the law. Additionally, pursuant to the law, an employer or any other person cannot report or threaten to report the actual or suspected citizenship or immigration status of a person or their family member to a federal, state, or local agency for exercising or attempting to exercise any right protected under the law.

**Additional Protections.** During any use of leave, an employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents, but the employee must continue to pay their share of the cost of such benefits. An employee returning from leave is entitled to return to their former position and to return to employment at the same rate of pay they had been receiving when leave began plus any automatic adjustments in their pay scale that occurred during the leave. The employee returning from leave is entitled to retain all accrued pre-leave benefits of employment and seniority as if there had been no interruption in service, provided that nothing under the law prevents the accrual of benefits or seniority during the leave pursuant to a collective bargaining or other agreement between the employer and employees. Under the law, employees, by agreement with their employer, may return to work part time during leave without forfeiting their right to return to employment at the end of the leave.

**Notice, Posting, and Recordkeeping.** Outside of the law, a separate statute requires that at the start of employment employers must provide each employee a written notice that contains, *e.g.*, paid vacation, sick time, or other paid time-off accruals and terms of use. Under the earned sick and safe leave law, when employment begins or on January 1, 2024 – whichever is later – employers must provide notice to all employees that contains the following information: employees are entitled to leave, including the amount of leave, the employee's accrual year, the terms of leave use, and a copy of the written policy for providing notice; retaliation against employees who request or use leave is prohibited; and that each

 

employee has the right to file a complaint or bring a lawsuit if leave is denied by the employer or the employee is retaliated against for requesting or using leave. Employers can provide this second type of notice by posting it in the workplace, providing a paper or electronic copy to employees, or posting it in a web- or app-based platform through which an employee performs work. If employers provide a handbook, it must include this notice.

Originally, the bill creating the paid leave law also amended the general paystub law to require that paystubs contained certain paid leave information. Due to amendments, this information was removed from the general paystub statute and similar – but not identical – requirements were included, as of July 1, 2024, within the paid leave law. Specifically, at the end of each pay period, employers must provide, in writing or electronically, information stating the employee's current amount of total number of leave hours available for use and used during the pay period. Employers may choose a reasonable system for providing this information, including but not limited to listing information on or attached to each paystub or an electronic system where employees can access this information. If an employer provides paystubs electronically, employees must have access to a work computer to review and print them.

Employers must retain accurate records documenting hours worked and leave taken by employees for three years. Moreover, records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with a state labor department request within 72 hours.

**End of Employment.** When employment ends, employers need not payout the monetary value of any unused leave. However, if they rehire the employee within 180 days of separation, they must reinstate previously unused leave that was not cashed out when employment ended.

**Enforcement.** Employees can file a lawsuit within three years of an alleged violation. Alternatively, employees can file a complaint with the state labor department.

Minneapolis and St. Paul have enacted local paid sick and safe time ordinances effective in 2017, and Bloomington enacted an ordinance effective in 2023.[466] In St. Paul, employers with 23 or fewer employees were not required to comply with the law until January 1, 2018.[467] In Bloomington, until January 1, 2024, employers with five or more employees had to provide paid leave, whereas other employers must provide unpaid leave. Since January 1, 2024, however, all employees must receive paid leave.

**Coverage & Eligibility.** The Minneapolis law applies to all private employers except railroad employers.[468] The Minnesota Supreme Court held state law did not preempt the ordinance and that the

[466] MINNEAPOLIS, MINN., CODE OF ORDINANCES §§ 40.40 *et seq.*; ST. PAUL, MINN., CODE OF ORDINANCES §§ 233.02 *et seq.*; Bloomington, MINN., CODE OF ORDINANCES §§ 23.05 *et seq.*.

[467] ST. PAUL, MINN., CODE § 233.21(a). Additionally, until January 1, 2023, in St. Paul new employers that were not chain establishments were only required to provide unpaid leave during an initial period after hiring their first employees: six months.

[468] To resolve litigation concerning whether the ordinance is wholly or partly preempted by the federal Railroad Unemployment Insurance Act (RUIA) and/or Railway Labor Act (RLA), the city entered into a settlement agreement with a railroad company in which the city agreed not to enforce the ordinance against the company due to federal preemption. The settlement terms are not public; however, when contacted about its enforcement position in light of the settlement, the enforcement agency confirmed it "do[es] not have jurisdiction over railroad employers and employees." Minneapolis, MN City Council Action No. 2019A-0992 (published Nov. 30, 2019) (Approving

 

law applies to non-Minneapolis employers.[469] However, the city did not wait for a decision from the state supreme court. Instead, it revised its rules to state the ordinance applies regardless of an employer's location, and provides online a notice to employers that retroactive compliance is required. In Minneapolis, only employees of employers with six or more employees are entitled to paid leave; employees of employers with five or fewer employees are entitled to unpaid leave.

The St. Paul and Bloomington laws apply to all private employers.

The Minneapolis, St. Paul, and Bloomington laws cover employees who perform work within each city's geographic boundaries for at least 80 hours in a year. However, in Minneapolis, the law does not apply to railroad employees.[470]

None of the laws covers independent contractors. Additionally, in Minneapolis and Bloomington, workers participating in the state's extended employment program are not covered. In Bloomington, student interns are not covered. In St. Paul, effective January 1, 2024, the law does not apply to air carrier flight deck or cabin crew members who are covered by the federal Railway Labor Act, work less than a majority of hours in Saint Paul in a calendar year, and are provided with paid leave that equals or exceeds the amount the law requires. Additionally, as of January 1, 2024, St. Paul has a collective bargaining agreement related exception applicable in the building and construction industry that mirrors the exception under state law.

**Accrual, Carry-Over, and Frontloading.** In Minneapolis, Saint Paul, and Bloomington, if an employer has a paid time off or other paid leave policy that meet's the law's accrual and use requirements and leave may be used under the same conditions as sick and safe time, additional leave is not required. Additionally, in Saint Paul, **effective January 1, 2024**, the policy must also satisfy state law requirements.

Otherwise, employees begin to accrue leave at the commencement of their employment or the effective date of the law, whichever is later. Employees in Minneapolis, St. Paul, and Bloomington must accrue one leave hour for every 30 hours worked; leave accrues in hour-unit increments, not fractionally. Employees in Minneapolis, St. Paul, and Bloomington accrue up to a maximum of 48 leave hours in a year and—unless an employer agrees to a higher amount—the total amount of accrued leave cannot exceed 80 hours at any time.

In Minneapolis, St. Paul, and Bloomington, accrued but unused leave carries over to the following year.

Frontloading standards vary by location. For example, in Minneapolis, a 48-hour frontload is required in the first year, and an 80-hour frontload is required in subsequent years. Frontloaded leave need not

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settlement of *Soo Line Railroad Company v. Minneapolis*, 0:19-cv-02093 (D. Minn.)); Email response, Amir Malik, Esq., Investigator, Minneapolis Department of Civil Rights Labor Standards Enforcement Division (Dec. 24, 2019).

[469] *Minnesota Chamber of Commerce v. Minneapolis*, 944 N.W.2d 441 (Minn. 2020).

[470] To resolve litigation concerning whether the ordinance is wholly or partly preempted by the federal Railroad Unemployment Insurance Act (RUIA) and/or Railway Labor Act (RLA), the city entered into a settlement agreement with a railroad company in which the city agreed not to enforce the ordinance against the company due to federal preemption. The settlement terms are not public; however, when contacted about its enforcement position in light of the settlement, the enforcement agency confirmed it "do[es] not have jurisdiction over railroad employers and employees." Minneapolis, MN City Council Action No. 2019A-0992 (published Nov. 30, 2019) (Approving settlement of *Soo Line Railroad Company v. Minneapolis*, 0:19-cv-02093 (D. Minn.)); Email response, Amir Malik, Esq., Investigator, Minneapolis Department of Civil Rights Labor Standards Enforcement Division (Dec. 24, 2019).

 

carry over to the following year. As of January 1, 2024, Saint Paul and Bloomington adopt the same standards as state law.

**Using Leave.** Employees in Minneapolis are entitled to use accrued leave beginning 90 calendar days following commencement of their employment. In Bloomington and Saint Paul, however, as of January 1, 2024, employees can use leave as it accrues just as they can under state law, though in Saint Paul an employee must work at least 80 hours in the city in a year before they can use leave. Employees can use leave for themselves or to care for a child, grandchild, grandparent, parent, sibling or spouse. Leave may also be used to care for a member of the employee's household in Minneapolis. Note, however, that as of 2024, Bloomington's and Saint Paul's definition of "family" member largely mirrors state law, and the reasons employees can use leave will be identical to state law.

In Minneapolis, leave can be used for the following sick time purposes:

- an employee's or family member's mental or physical illness, injury, or health condition;
- to obtain medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or a family member; or
- to obtain preventive medical or health care for the employee or a family member.

If an employee or a family member is a victim of domestic abuse, sexual assault, or stalking, leave can be used for the following safe time purposes in Minneapolis:

- to seek medical attention related to physical or psychological injury or disability;
- to obtain services from a victim services organization;
- to obtain psychological or other counseling;
- relocation; or
- to take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.

Additionally, in Minneapolis, leave can be used for the following purposes:

- closure of employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency;
- closure of a family member's school or place of care by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency; and
- to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

Employees must be allowed to use leave in increments consistent with current payroll practices and employer policies, but employers can set up to a four-hour minimum increment of use. As of January 1, 2024, however, Saint Paul generally follows the standard set under state law. In Bloomington, and Saint Paul, if an employee's leave balance is below the minimum increment, an employee must be able to use the leave balance and the employer's minimum increment cannot be enforced.

**Requesting & Documenting Leave**. In Minneapolis and Bloomington, for foreseeable absences an employer may require notice of the intention to use leave, but in no case more than seven days' advance notice. For unforeseeable absences, an employer may require an employee to give notice of the need for leave as soon as practicable.

In St. Paul, as of January 1, 2024, standards mirror those under state law. When possible, the request must include the absence's expected duration. Employers may require employees to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave if they do not interference with the purpose for taking leave. For unforeseeable absences, an employee or the employee's spokesperson must give notice as soon as practicable.

In all cities, employers may require an employee to provide reasonable documentation that leave was taken for a covered purpose if more than three consecutive days of leave is used. Bloomington's and Saint Paul's general documentation standards, however, mirror state law as of 2024. Notably, in Bloomington, Minneapolis, and St. Paul, employers may be able to seek documentation earlier if there is clear evidence of misuse (Bloomington and Minneapolis) or a pattern of abuse (St. Paul).

**Payment for Leave Used.** In Minneapolis, leave is paid at the same hourly rate, and with the same benefits, an employee is scheduled to earn during the time they use leave, and cannot be less than the state minimum wage. As of January 1, 2024, St. Paul's general pay standard will be identical to that under the state law.

For exempt employees, in Minneapolis the enforcement agency says the regular hourly rate is based on an employee working 40 hours per week or the employee's regular workweek, if it involves fewer hours. In St. Paul, to calculate a salaried employee's hourly rate, divide the annual salary by the number of weeks worked per year – *i.e.*, weekly salary – then divide the weekly salary by the number of hours in the employee's normal or average work week. In Bloomington, exempt employees must receive an hourly equivalent when they use leave.

For employees earning commissions, in Minneapolis and Bloomington the hourly rate must be at least the state minimum wage, and commissions are not included. In St. Paul, standard vary depending. For employees who are paid on a commission, the standard hourly rate of pay is the base wage the employee receives or the applicable minimum wage, whichever is greater. For commission-only employees, employers must take the employee's total annual commissions, divide by the number of weeks worked per year, then divide weekly commissions by the number of hours in the employee's normal or average workweek.

In St. Paul, to calculate a pieceworker's hourly rate, divide the employee's total earnings for the most recent workweek in which no sick time was taken by the number of hours worked during that week. In Bloomington and Minneapolis, the enforcement agencies say the employee's rate of pay is based on a good faith calculation of an average or typical hourly rate based on the employee's comparable recent earnings history for similar jobs or shifts.

In Bloomington and Minneapolis, the enforcement agencies say employees with multiple jobs must be paid the applicable rate in effect when leave is used. St. Paul requires that, if the employee's pay rate fluctuates within a single job title based on duties an employee is performing, the employee's standard rate is the applicable rate; in St. Paul, this also applies if pay rate fluctuates between two different job titles.

Although the law in St. Paul does not address what is excluded when calculating an employee's pay rate, Minneapolis and Bloomington have a long list of exclusions: tips; commissions; reimbursement for expenses incurred on the employer's behalf; premium payments for overtime work or work on weekends, holidays, or scheduled days off, if the premium rate is at least 1.5 times the normal rate; bonuses; cash or other valuables in the nature of gifts on special occasions; payments made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan; and contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees.

**Unused Leave when Employment Ends**. On January 1, 2024, however, Bloomington and Saint Paul adopt the standard that state law uses. In Minneapolis, when employment ends, payout for accrued but unused leave is not required. However, an employer must reinstate unused leave if an employee is rehired within 90 days of separation in Minneapolis. Moreover, in Minneapolis, reinstated leave can be used upon rehiring.

**Prohibitions.** In all cities, employers cannot require, as a condition of using leave, that an employee find a replacement worker to cover the hours during which the employee is on leave. Employers cannot interfere with, restrain, or deny the actual or attempted exercise of rights protected under the law. Additionally, employers cannot take adverse employment action, discriminate, or retaliate against an employee for exercising protected rights.

**Notice, Posting & Record Keeping.** In St. Paul, when employment begins or on January 1, 2024, whichever is later, employers must provide a notice that includes the following:

- employees are entitled to earned sick and safe time;
- the amount of earned sick and safe time (type of accrual method, the maximum number of hours an employees can accrue in a year, and how leave carries over to the next yest);
- the employee's accrual year;
- the terms of leave use guaranteed under the law, including the written policy requiring advance notice when requesting leave (which must identify notice requirements for using leave;
- the employer's policy for any employee suspected of misusing leave;
- retaliation against employees who request or use earned sick and safe time is prohibited; and
- each employee has the right to file a complaint or bring a civil action if earned sick and safe time as required by the law is denied by the employer or the employee is retaliated against for requesting or taking earned sick and safe time.

Additionally, in St. Paul, employers must clearly communicate to each employee their designated "year," which the enforcement agencies in Bloomington and Minneapolis also say must occur.

Within its Wage Theft Prevention Ordinance, Minneapolis requires covered employers to provide written notice at the start of employment for new employees concerning various pieces of information, including notice an employee's rights under the sick and safe time ordinance, including the method by which employees will accrue leave, the date they can use leave, and the employer's designated year for ordinance compliance purposes. Written notice of changes, before they take effect, is also required,

 

which must be signed by the employee unless the change is a wage increase about which the employee was informed in advance of the specific amount and date thereof. Additionally, in Minneapolis, employers must provide employees a copy of the required wage theft prevention poster.

In Bloomington, employers must conspicuously display the sick and safe time ordinance's poster.

In Minneapolis and St. Paul, upon an employee's request, employers must provide, in writing or electronically, information stating the employee's then-current amount of accrued available leave and leave already used. Employers can choose a reasonable system for providing this notification, including, but not limited to, listing information on each paystub or developing an online system where employees can access their own information. However, in Minneapolis, at the end of each pay period an employer must provide a written or electronic earnings statement that includes this information. Similarly, in Bloomington employers must comply with state law paystub requirements, in writing or electronically, and the paystub must include information stating the employee's then-current amount of leave available and used. Employers who provide electronic paystubs must provide employees access to an employer-owned computer during their regular working hours to review and print them. If an employer receives at least 24 hours' notice from an employee that the employee wants to receive written paystubs, the employer must provide them in writing and do so on an ongoing basis.

In Minneapolis, St. Paul, and Bloomington, employers that provide an employee handbook must include a notice of employee rights and remedies under the law in the handbook. Moreover, in Bloomington, rules state that this also applies if an employer provides "orientation materials."

In St. Paul, employers must distribute or post their written policies, which must meet or exceed the law's requirements. If an employer provides combined paid leave to meet its obligation under the ordinance, its policy must information employee about their right to use this leave under the ordinance.

Employers must maintain accurate records for each employee showing hours worked, as well as leave accrued (in Minneapolis and Bloomington, available) and used. Additionally, in St. Paul required information includes employees' names, job titles, work and personal phone numbers, email and mailing addresses, rates of pay, amount of leave paid out, leave requests, remote-hybrid agreements, leave acknowledgment forms, as well as a leave policy and any employee handbook. Records must be kept for three years in St. Paul, and for three years in addition to the current calendar year in Minneapolis and Bloomington. If an employer fails to maintain or retain adequate records and an issue arises as to an alleged violation of an employee's rights under the law, it is presumed that the employer has violated the law absent clear and convincing evidence otherwise. Additionally, employers must allow an employee to inspect (Minneapolis and Bloomington) or copy (St. Paul) required records. Finally, in Minneapolis, the Wage Theft Prevention Ordinance requires employers to create and keep records containing the following information: employee's name, address, and position; notice(s) and changes thereto; earnings statements; and a list of personnel policies provided to the employee, including the date given and a brief description thereof. These records must be kept for at least three years after employment ends, though earnings statements must be kept for at least three years after the date provided.

**Enforcement.** Under the ordinance in Bloomington, complaints can be filed with the city enforcement agency within one year of an alleged violation. In Minneapolis, under the Wage Theft Prevention Ordinance, this timeframe increases to within two years or, if a violation was willfulness and not due to

 

mistake or inadvertence, within three years. In St. Paul, as of January 1, 2024, complaints can be filed within 3 years of an alleged violation.

In St. Paul, a private lawsuit can be filed for violations of the anti-interference and anti-retaliation provisions. In Bloomington, a private lawsuit can be filed for violations of the law.

### 3.9(c) *Pregnancy Leave*

#### 3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

**Pregnancy Discrimination Act (PDA).** Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[471] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

**Family and Medical Leave Act (FMLA).** A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[472] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

**Americans with Disabilities Act (ADA).** Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to

[471] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[472] 29 C.F.R. § 825.202.

 

the impairment.[473] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

### 3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Minnesota's Parenting Leave Law, described in **3.11(c)(ii)**, provides up to 12 weeks of leave to female employees for prenatal care, or incapacity due to pregnancy, childbirth, or related health conditions. Additionally, Minnesota has two laws that require employers to make reasonable accommodations for pregnancy, childbirth, or related disabilities.

## 3.9(d) *Adoptive Parents Leave*

### 3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

### 3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Adoptive parents may be entitled to leave under Minnesota's Parenting Leave statute, not to exceed 12 weeks without the employer's agreement. For information on the Minnesota Parenting Leave Act, see **3.9(a)(ii)**.

## 3.9(e) *School Activities Leave*

### 3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

### 3.9(e)(ii) *State Guidelines on School Activities Leave*

Minnesota law requires that employers grant employees leave to attend school conferences and school-related activities.[474] The law applies to employees working for an employer for less than one year, and applies to employers with one or more employees.[475] An employee must, however, work on at least a half-time basis to qualify for the leave.[476]

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[473] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[474] MINN. STAT. § 181.9412.

[475] MINN. STAT. §§ 181.9412(1), 181.940( 2), (3).

[476] MINN. STAT. §§ 181.940(2), 181.9412.

A covered employer must permit an employee to take up to 16 hours of leave during any 12-month period to attend school conferences or school-related activities related to the employee's child, including a foster child.[477] This leave need not be paid; however, an employee must be permitted to substitute any accrued paid leave for any part of this leave.[478] If the employee's child receives childcare services (as defined by the statute) or attends prekindergarten regular or special education programs, the employee may also use this leave time to attend a conference or activity, or to observe or monitor the services or program.[479]

Although the statute is fairly broad, some limitations are placed on the leave to ensure that the employer's business is not unduly disrupted. First, the meetings must be of the type that they cannot be scheduled during nonworking hours.[480] Second, an employee must provide the employer with reasonable prior notice of the leave and make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.[481]

### 3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

#### 3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

#### 3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

An employer must grant a paid leave of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The combined length of the leaves is not to exceed 40 hours unless agreed to by the employer.[482]

Covered employers are those that employ 20 or more employees at one or more sites. Eligible employees are those who provide an average of 20 or more hours of service to the employer per week. The employer may require medical verification of each leave requested. If there is a medical determination that the employee does not qualify as a donor, the paid leave granted to the employee before the determination is not forfeited. An employer may not retaliate against an employee for requesting or obtaining a leave of absence for this purpose.[483]

### 3.9(g) *Voting Time*

#### 3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

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[477] MINN. STAT. § 181.9412 (1a), (2).

[478] MINN. STAT. § 181.9412(3).

[479] MINN. STAT. § 181.9412(2).

[480] MINN. STAT. § 181.9412(2).

[481] MINN. STAT. § 181.9412(2).

[482] MINN. STAT. § 181.945.

[483] MINN. STAT. § 181.945.

### 3.9(g)(ii) *State Voting Time Guidelines*

Minnesota law requires an employer to allow employees time off to vote in various state and federal elections.[484] An employer must give every employee who is eligible to vote the right to be absent for the purpose of voting for the time necessary to appear at the employee's polling place, cast a ballot, and return to work on the day of that election or, **effective July 1, 2024**, during the requisite time period for voting in person before election day.[485] The employer must provide the leave without penalty or deduction from salary or wages for the absence. In addition to the right to leave, Minnesota law prohibits an employer from indirectly or directly refusing, abridging, or interfering with any election right of its employees.[486] A qualifying election for purposes of the leave, includes any of the following:

- a regularly scheduled state or presidential primary or general election;
- an election to fill a vacancy in the office of U.S. senator or representative; or
- an election to fill a vacancy in the office of state senator or representative.[487]

Violation of this section may be prosecuted by the county attorney and result in a misdemeanor conviction.[488]

Minnesota law also allows employees to be absent without penalty to serve as an election judge. Such leave is paid; however, an employee may reduce the salary or wages of an employee serving as an election judge by the amount paid to the election judge by the appointing authority during the time the employee was absent from the place of employment. An employee wishing to serve as an election judge must give an employer at least 20 days written notice. The written notice must be accompanied by a certification from the appointing authority stating the hourly compensation to be paid the employee for service as an election judge and the hours during which the employee will serve. An employer may restrict the number of persons to be absent from work for the purpose of serving as an election judge to no more than 20% of the total workforce at any single worksite[489].

### 3.9(h) *Leave to Participate in Political Activities*

### 3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

### 3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Minnesota law requires an employer to allow employees time off to attend:

1. any meeting of the state central committee or executive committee of a major political party if the employee is a member of the committee; or

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[484] MINN. STAT. § 204C.04.

[485] MINN. STAT. §§ 203B.081; 204C.04, as amended by H.B. 1830 (Minn. 2023).

[486] MINN. STAT. § 204C.04(1).

[487] MINN. STAT. § 204C.04(2).

[488] MINN. STAT. § 204C.04(3).

[489] MINN. STAT. § 204B.195.

2. any convention of major political party delegates including meetings of official convention committees if the employee is a delegate or alternate delegate to that convention.[490]

The employee requesting such leave must give at least 10 days' written notice to the employer. Any employee who gives proper notice under this law may not incur any penalty or salary/wage deduction as a result of the absence, aside from a deduction in salary or wages for the actual time of the absence.[491] Employers that violate this law may be found guilty of a misdemeanor.[492]

### 3.9(i) *Leave to Participate in Judicial Proceedings*

#### 3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[493] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[494] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

#### 3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

**Leave to Serve on a Jury.** Minnesota law protects the employment of employees who miss work due to jury duty.[495] An employer may not terminate, threaten to terminate, or otherwise coerce an employee because the employee receives or responds to a summons for jury duty, serves as a juror, or attends court for prospective jury duty.[496] An employer's violation of this statute constitutes criminal contempt resulting in a $700 fine and imprisonment for up to six months, and may subject an employer to civil damages for up to six weeks' lost wages and reasonable attorneys' fees.[497]

**Leave to Comply with a Subpoena.** Although not technically a leave requirement, Minnesota prohibits an employer from discharging, disciplining, threatening, or otherwise discriminating against an employee who is subpoenaed or requested by the prosecutor to attend a criminal proceeding.[498] An employer that violates this statute is guilty of a misdemeanor and can be punished for contempt of

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[490] MINN. STAT. § 202A.135.

[491] MINN. STAT. § 202A.135.

[492] MINN. STAT. § 202A.135.

[493] 28 U.S.C. § 1875.

[494] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[495] MINN. STAT. § 593.50.

[496] MINN. STAT. § 593.50(1).

[497] MINN. STAT. § 593.50(2), (3).

[498] MINN. STAT. § 611A.036.

court, and may be forced to offer reinstatement and back wages to a discharged employee.[499] Furthermore, Minnesota law provides a private cause of action to enforce this provision, and an employee who is successful with such a suit is entitled to recover costs and disbursements, including reasonable attorneys' fees.[500]

### 3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

#### 3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

#### 3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

**Crime Victims Leave.** Under Minnesota law, an employer must allow a victim of a violent crime, as well as the victim's spouse or immediate family members, reasonable time off from work to attend criminal proceedings related to the victim's case.[501] An employer is entitled to request verification supporting the employee's reason for being absent from work, however all information related to the employee's leave must be kept confidential.[502]

An employer that violates this statute is guilty of a misdemeanor and can be punished for contempt of court, and may be forced to offer reinstatement and back wages to a discharged employee.[503] Furthermore, Minnesota law provides a private cause of action to enforce this provision, and an employee who is successful with such a suit is entitled to recover costs and disbursements, including reasonable attorneys' fees.[504]

**Paid Family and Medical Leave – Safety Leave**. **Effective January 1, 2026**, employees may take up to 12 weeks of paid family and medical leave because of domestic abuse, sexual assault, or stalking of an employee or an employee's family member.[505] Employees may use safety leave to seek medical attention related to the physical or psychological injury or disability cause by domestic abuse, obtain services from a victims service organization, obtain psychological or other counseling, seek relocation, or seek legal advice or legal action resulting from the domestic abuse, sexual assault or stalking. See 3.9(a)(ii) for more information.

**Paid Sick Leave. Effective January 1, 2024**, the Minnesota paid sick leave statute permits an employee who has an absence due to domestic abuse, sexual assault, or stalking of an employee or an employee's family member.[506] The leave of absence must be used to seek medical attention caused by domestic abuse, sexual assault or stalking, obtain services from a victims services organization, seek relocation, or

[499] MINN. STAT. § 611A.036(5).

[500] MINN. STAT. § 611A.036(6).

[501] MINN. STAT. § 611A.036(2).

[502] MINN. STAT. § 611A.036(4).

[503] MINN. STAT. § 611A.036(5).

[504] MINN. STAT. § 611A.036(6).

[505] MINN. STAT. § 268B.01.

[506] MINN. STAT. § 181.9447(1).

 

seek legal advice or legal action due to domestic abuse, sexual assault or stalking. See 3.9(b) for more information. Again, note that the Minnesota Sick Leave Benefits for Care of Relatives Act, under which employers were required to provide leave for the purpose of providing or receiving assistance because of sexual assault, domestic abuse, or stalking, was repealed **effective January 1, 2024**.[507]

### 3.9(j)(iii) *(k) Military-Related Leave*
### 3.9(j)(iv) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

**USERRA.** USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[508]

**FMLA.** Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[509] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.510 Notably, leave is only available for covered relatives of

[507] S.B. 3035 (Minn. 2023).

[508] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[509] 29 C.F.R. § 825.126(a).

[510] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29C.F.R. § 825.126(a)(3).

 

military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.

2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

### 3.9(j)(v) *State Guidelines on Military-Related Leave*

**Military Service Leave.** Minnesota law grants employees the right to take leave to serve in the military. The leave provisions depend on whether the employer is a public or private employer, granting greater rights to employees working for public employers. Employees of private employers that engage in active service or convalesce due to injury from a time of war or an emergency declared by the proper authority of the state may take an unpaid leave of absence, not to exceed four years (plus such additional time as may be required by law) for their service.[511] Upon return, an employee is entitled to reinstatement to their former position or one of like seniority, status, and pay, if available, provided:

1. the position still exists;
2. the employee is not mentally or physically disabled from performing the position;
3. the employee applies for reinstatement within 90 days of termination of military service; and
4. the employee submits an honorable discharge or other form of release indicating the employee's service was satisfactory.[512]

An employer is prohibited from terminating a reinstated employee except for cause (after notice and hearing) for one year following reinstatement.[513]

**Family Military Leave.** Minnesota law requires any employer to grant up to 10 working days of a leave of absence without pay to an employee whose immediate family member (parent, child, grandparent sibling, or spouse) has been injured or killed while engaged in active service (state or federal).[514] An employee must give as much notice as is practicable of the employee's intent to exercise this leave.[515] An employer may shorten the leave granted by this provision by any period of paid leave the employer grants.[516]

**Leave to Attend Military Ceremonies.** Unless leave would unduly disrupt the operations of an employer, an employer must grant a leave of absence without pay to an employee whose immediate family member, as a member of the U.S. armed forces, has been ordered into active service in support of a war or other national emergency.[517] The employer may limit the amount of military leave provided to the

[511] MINN. STAT. § 192.261.

[512] MINN. STAT. § 192.261(2).

[513] MINN. STAT. § 192.261(2).

[514] MINN. STAT. § 181.947(2).

[515] MINN. STAT. § 181.947(3).

[516] MINN. STAT. § 181.947(4).

[517] MINN. STAT. § 181.948(2).

actual time necessary for the employee to attend a send-off or homecoming ceremony for the mobilized service member not to exceed one day's duration in any calendar year.

**Other Military-Related Protections: Spousal Unemployment.** Minnesota does not have a military-specific provision for military spouses. However, an applicant who quits employment is eligible for all unemployment benefits if the applicant quit in order to relocate to accompany a spouse whose job location changed making it impractical for the applicant to commute.

### 3.9(k) *Other Leaves*

#### 3.9(k)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

#### 3.9(k)(ii) *State Guidelines on Other Leaves*

**Quarantine.** An employer may not terminate, discipline, threaten, or penalize an employee because the person was isolated or quarantined by the public safety authority for up to 21 days.[518]

## 3.10 Workplace Safety

### 3.10(a) *Occupational Safety and Health*

#### 3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[519] Employers are also required to comply with all applicable occupational safety and health standards.[520] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[521] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

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[518] MINN. STAT. § 144.4196.

[519] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[520] 29 U.S.C. § 654(a)(2).

[521] 29 U.S.C. § 667(c)(2).

### 3.10(a)(ii) *State-OSH Act Guidelines*

Minnesota, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[522] Thus, Minnesota is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. The Minnesota Occupational Safety and Health Act (MOSHA)[523] is administered by the Commissioner of the Department of Labor and Industry ("Commissioner"). Enforcement responsibility is actually carried out by the Occupational Safety and Health Division ("Division") of the Minnesota Department of Labor and Industry.

**Coverage & Application.** The statutory provisions and regulatory standards established by the Minnesota legislature and the Division apply broadly to virtually all places of employment in Minnesota. MOSHA applies to all factories, plants, foundries and construction sites, farm workplaces, premises, vehicles, or any other work environment where any employee works during the course of their employment.[524] MOSHA does not apply, however, to any working conditions that are under the exclusive jurisdiction of the federal government.[525] An employer may not request or require an employee to waive rights and duties under MOSHA.[526]

The requirements set forth in MOSHA apply to an employer that employs one or more employees, and includes any person who has the power to hire, fire, or transfer employees.[527] The definition of *employee* under MOSHA is extremely broad. MOSHA defines *employees* as any person permitted to work by an employer.[528] All corporations, partnerships, associations, groups of persons, and the state and all of its political subdivisions employing employees are subject to the safety and health requirements and standards set forth in MOSHA.[529]

**General Duty Clause.** MOSHA contains a *general duty* clause that covers those safety and health hazards not addressed by a more specific standard. Under this general duty, every employer is obligated to "furnish each of its employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to its employees."[530] This catchall provision means that employers cannot ignore health and safety hazards merely because no specific standard prohibits the employer's practice or condition. Employers should constantly monitor and audit their facilities and the conditions of employment to determine whether health or safety hazards exist. Such health and safety hazards, even if undetected, could become a source of liability for the employer under MOSHA.

**MOSHA Standards.** Minnesota has adopted state standards under MOSHA that have been approved by the U.S. Department of Labor to be at least as effective as comparable federal standards. In addition, the

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[522] 29 U.S.C. § 667.

[523] MINN. STAT. §§ 182.65 *et seq.*

[524] MINN. STAT. § 182.652(1).

[525] MINN. STAT. § 182.652(2).

[526] MINN. STAT. § 182.6575.

[527] MINN. STAT. § 182.651(7).

[528] MINN. STAT. § 182.651(9).

[529] MINN. STAT. § 182.651(7).

[530] MINN. STAT. § 182.653(2).

 

Minnesota Department of Labor and Industry has adopted the standards set forth by the U.S. Department of Labor, and incorporated those standards into MOSHA.[531]

MOSHA regulations are located in Minnesota Rules, chapters 5205, 5206, 5207, 5208, and 5210. The standards found in chapters 5206, 5208, and 5210 are referred to as "horizontal" standards because of their broad application to both general industry and construction locations. Chapter 5205 applies only to general industry locations, and chapter 5207 applies only to construction locations.

The MOSHA standards found in chapters 5206, 5208, and 5210 are applicable to all general industry and construction locations and govern, among other things:

- employee "right-to-know" requirements;
- harmful physical agents;
- infectious agents;
- labeling;
- farming operations training plan;
- accident and injury reduction program; and
- recording and reporting occupational injuries and illnesses.

The MOSHA standards found in chapter 5205 are applicable only to general industry locations and govern, among other things:

- personal protective equipment;
- walking and working surfaces;
- general environmental controls;
- illumination;
- ventilation for repair garages, body shops, and service stations;
- steam boilers;
- platform manlifts;
- maintenance and repair of buildings and equipment;
- vehicles;
- machine guarding;
- cranes and hoists; and
- hoppers.

The MOSHA standards found in chapter 5207 are applicable only to construction locations and govern, among other things:

- demolition operations;

[531] MINN. R. 5205.0010.

 

- spray painting of building interiors;
- flammable liquid tank supports;
- personal protective equipment;
- walking, working surfaces;
- confined spaces;
- environmental controls;
- cranes, hoists and derricks;
- machine guarding;
- maintenance and repair of equipment;
- sanitation; and
- vehicles.

### 3.10(b) *Cell Phone & Texting While Driving Prohibitions*

#### 3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

#### 3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

All drivers in Minnesota are prohibited using a cell phone while in motion or a part of traffic. The prohibition does not apply if a wireless communications device is used solely in a voice-activated or other hands-free mode.[532] Minnesota law permits a person to use a wireless communication device for the following reasons:

- Solely in a voice-activated or hands-free mode to initiate or participate in a cell phone call or initiate, compose, send, or listen to an electronic message. However, this exception does not apply to accessing nonnavigation video content, engaging in video calling, engaging in live-streaming, accessing gamily data, or reading electronic messages.
- To operate a GPS system or navigation system in a manner that does not require the driver to type while the vehicle is in motion or a part of traffic, provided that the person does not hold the device with one or both hands.
- To listen to audio-based content in a manner that does not require the driver to scroll or type while the vehicle is in motion or a part of traffic, provided that the person does not hold the device with one or both hands.
- To obtain emergency assistance to report an accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed.
- In the reasonable belief that a person's life or safety is in danger.[533]

The prohibition does not apply to a device or feature that is permanently integrated into the vehicle, a GPS or other navigation system, or a two-way radio. The texting prohibition applies to employees driving

[532] MINN. STAT. § 169.475.

[533] MINN. STAT. § 169.475.

 

for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the restriction.

### 3.10(c) *Firearms in the Workplace*

#### 3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

#### 3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

**Firearms in the Workplace.** Employers may make a "reasonable request" that persons not carry concealed firearms at an establishment.[534] An employer may establish policies restricting the carrying or possession of firearms by employees while acting in the course and scope of employment.[535]

A *reasonable request* consists of: (1) a conspicuous sign at every entrance stating "[IDENTITY OF OPERATOR] BANS GUNS IN THESE PREMISES;" (2) the sign must be readily visible and within four feet (laterally) of the entrance; (3) the bottom of the sign must be between four and six feet above the floor; and (4) the sign must be in black Arial letters, at least 1½ inches in height, against a bright background that is at least 187 square inches. The requester or agent must personally inform the person of the posted request and demand compliance.[536]

**Firearms in Company Parking Lots.** The owner or operator of a private establishment may not prohibit the lawful carrying or possession of firearms in a parking facility or parking area.[537]

### 3.10(d) *Smoking in the Workplace*

#### 3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

#### 3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

In Minnesota, smoking is prohibited in indoor places of employment with two or more employees. Smoking is also prohibited in company-owned vehicles during work hours when more than one person is present. Employers must post signs at all entrances to the workplace stating, "Smoking is prohibited in this entire establishment" or a similar statement.[538]

### 3.10(e) *Suitable Seating for Employees*

#### 3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

#### 3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Minnesota law does not address suitable seating requirements for employees.

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[534] MINN. STAT. § 624.714.

[535] MINN. STAT. § 624.714.

[536] MINN. STAT. § 624.714(17).

[537] MINN. STAT. § 624.714.

[538] MINN. STAT. §§ 144.411 to 144.417.

### 3.10(f) *Workplace Violence Protection Orders*

#### 3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

#### 3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Minnesota law does not address employer workplace violence protection orders.

## 3.11 Discrimination, Retaliation & Harassment

### 3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

#### 3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[539] (2) the Americans with Disabilities Act (ADA);[540] (3) the Age Discrimination in Employment Act (ADEA);[541] (4) the Equal Pay Act;[542] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[543] (6) the Civil Rights Acts of 1866 and 1871;[544] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[545]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or

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[539] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[540] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[541] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[542] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[543] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[544] 42 U.S.C. §§ 1981, 1983.

[545] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[546] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[547]

### 3.11(a)(ii) *State FEP Protections*

Minnesota's principal FEP law is the Minnesota Human Rights Act (MHRA).[548] It is a comprehensive statute that addresses discrimination in the areas of public accommodation, public services, housing, education, credit, and business relationships, in addition to employment. The MHRA prohibits employment discrimination on the basis of:

- race (including traits associated with race, including but not limited to hair texture, and hair styles such as braids, locs, and twists);
- color;
- creed;
- religion;
- national origin (includes ancestry);
- sex (includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth);
- marital status;
- status with regard to public assistance;
- familial status (conditions of one or more minors being domiciled with their parent(s) or legal guardian or the designee of the parent(s) or guardian with the written permission of the parent(s) or guardian. Familial discrimination protections apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority. This also includes living with and caring for one or more individuals who lack the ability to provide for their own physical health, safety, or self-care because they are unable to receive and evaluate information or make or communicate decisions.)
- membership or activity in a local commission;
- disability (defined as one who has a physical, sensory, or mental impairment that materially limits one or more major life activities, and who has a record of that impairment, or is regarded as having an impairment. Disability also includes an impairment that is episodic or in remission);
- sexual orientation (actual or perceived; includes actual or perceived gender identity);

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[546] The EEOC's website is available at http://www.eeoc.gov/.

[547] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[548] MINN. STAT. §§ 363A.01 *et seq*.

 

- age (25);[549] or
- gender identity (defined as a person's inherent sense of being a man or a woman, both, or neither. A person's gender identity may or may not correspond to their assigned sex at birth or their primary or secondary sex characteristics. A person's gender identity is not necessarily visible to others.[550]

**Covered Employers.** An *employer* means a person, including a partnership, association, corporation, or the state or its subdivisions, who has one or more employees.[551] The MHRA also prohibits unfair discrimination by labor organizations against their members and potential members, and by employment agencies against their clients.[552]

**Exceptions to coverage.** Fraternal corporations, associations or societies are exempted when religion is a bona fide occupational qualification for employment. The law does not prohibit a not-for-profit religious organization (or an educational institution operated by a not-for-profit religious organization) from limiting admission or giving preference to persons of the same religion or denomination; taking any action with respect to education, employment, housing and real property, or use of facilities; or taking any action with respect to providing goods, services, facilities, or accommodations related to a civil marriage that is in violation of its religious beliefs, provided that those actions are consistent with the protections of the First Amendment of the U.S. Constitution and the Minnesota Constitution. The exemption does not apply to a religious organization's secular business activities that are unrelated to its religious and educational purposes.[553]

**Covered Individuals.** An *employee* is defined as "an individual who is employed by an employer and who resides or works" in Minnesota.[554] The MHRA protections do not apply to workers who lack employee status (such as independent contractors),[555] nor does the MHRA extend protection to employees who have no connection to Minnesota, even where the employer is located in Minnesota.[556]

However, the Supreme Court of Minnesota recently held that lack of compensation does not preclude application of the MHRA to an unpaid practicum student. Therefore, unpaid interns are now covered by the act.[557]

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[549] MINN. STAT. §§ 363A.03(2), (42); 363A.08(2).

[550] MINN. STAT. §363A.08

[551] MINN. STAT. § 363A.03(16), (30).

[552] MINN. STAT. § 363A.08(2),(3).

[553] MINN. STAT. § 363A.20 (2).

[554] MINN. STAT. § 363A.03(15).

[555] *Hanson v. Friends of Minn. Sinfonia*, 181 F. Supp. 2d 1003, 1010 (D. Minn. 2002), *aff'd,* 322 F.3d 486 (8th Cir. 2003) (dismissing plaintiff's MHRA claim because the court determined she was an independent contractor).

[556] *See Arnold v. Cargill Inc*., 2002 WL 1576141, at *4 (D. Minn. July 15, 2002) ("The fact that [the company's] headquarters are located in and the contested company-wide policies emanated from Minnesota is insufficient to justify extraterritorial application [of the MHRA], particularly when there is no evidence before the Court that [the company] could not otherwise be held accountable in the courts of other states . . . .").

[557] *Abel v. Abbott Northwestern Hospital*, 947 N.W.2d 58 (Minn. 2020) (holding that "… we do not agree that Abel's employment discrimination claim should be dismissed for lack of compensation. Like a traditional employee, Abel underwent an application process and was selected to take part in the practicum program. Once she was a part of the practicum program, Abel accessed traditional employee resources...")

 

**State Enforcement Agency & Civil Enforcement Procedures**

**Request for Agency Action.** Any person aggrieved by a violation of the MHRA may file a charge with the Minnesota Department of Human Rights (MDHR) or may initiate a civil action in district court.[558] If the claimant chooses to file a charge with the MDHR, the claimant must complete and sign a form provided by the MDHR. Within 10 days after the filing of a charge, the MDHR will serve a copy of the charge upon the respondent and request that a written response be submitted within 20 days of receipt. The MHRA instructs the Commissioner to "promptly inquire" into the truth of the allegations contained in the charge; the MDHR must make a determination regarding the merits within 12 months of its filing.[559] This procedural requirement is strictly enforced.[560]

If the Commissioner of the MDHR determines that there is no probable cause to credit the claimant's allegations of unfair discriminatory practices, the Commissioner must serve written notice of the determination within 10 days.[561] The charging party may request that the Commissioner reconsider their determination. The Commissioner's final order is not appealable, although this order does not prevent the claimant from filing a civil action in district court.[562]

**Hearing.** If the Commissioner issues a finding of probable cause, and determines that conciliation efforts have been or would be unsuccessful, it may issue a complaint and notice of hearing before an administrative law judge.[563] The attorney general acts as the attorney for the MDHR.[564] The case is tried as a contested hearing, and the judge makes findings of fact and conclusions of law. The administrative law judge's findings and conclusions are subject to appeal in accordance with Minnesota Statute sections 14.63 to 14.68, which provide for a right of appellate review by petition for writ of certiorari before the Minnesota Court of Appeals.[565]

**Exclusivity of Remedy.** Unlike under Title VII, a claimant under the MHRA is not required to exhaust their administrative remedies or obtain a "right-to-sue" letter from the MDHR prior to filing a judicial complaint. Instead, a claimant may immediately file a civil action under the MHRA in the district court where the alleged unlawful discriminatory practice occurred, or where the employer resides or has a principal place of business.[566]

The MHRA provides expressly that any action brought under the statute is to be heard by a judge sitting without a jury, although an advisory jury is often empaneled by the court.[567] In *Kampa v. White Consolidated Industries, Inc.*, the Eighth Circuit Court of Appeals held that a plaintiff is entitled to a jury trial in federal court on claims alleged under the MHRA, despite the statute's plain language, by virtue of

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[558] MINN. STAT. §§ 363A.28(1), 363A.33.

[559] MINN. STAT. § 363A.28(6).

[560] *See State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 702 (Minn. 1996) (although not a jurisdictional bar to further proceedings, MDHR's failure to issue a probable cause determination within 12 months of the filing of the charge permits the respondent to seek appropriate relief in proportion to the prejudice suffered as a result of the delay).

[561] MINN. STAT. § 363A.28(6)(c).

[562] MINN. STAT. § 363A.28(6)(c).

[563] MINN. STAT. § 363A.28(6)(d).

[564] MINN. STAT. § 363A.32.

[565] MINN. STAT. § 363A.29(1).

[566] MINN. STAT. § 363A.33(6).

[567] MINN. STAT. § 363A.33(6).

 

the Seventh Amendment right to a jury trial in the U.S. Constitution.[568] The federal appellate court reasoned that the Seventh Amendment extends to suits that seek "legal remedies," and since the MHRA provides for compensatory and punitive damages, claimants under the statute have a right to a jury trial in federal court. The Seventh Amendment does not apply to the states, and accordingly, MHRA claims filed in state court are tried to the court sitting without a jury.

The MHRA imposes statutory requirements upon claimants who choose to file a charge with the MDHR *first*, before proceeding to court. Specifically, it provides that such claimants may only file a civil action:

- within 90 days after receipt of notice that the Commissioner has dismissed the charge because it is frivolous or without merit, or after a finding of no probable cause, or for other reasons that do not address the claim's merits;
- within 90 days after the receipt of notice that the Commissioner has reaffirmed a finding of no probable cause after a request for reconsideration has been made; or
- after 45 days from the filing of the charge if the Commissioner has not held a hearing on the matter or if the Commissioner has not entered into a conciliation agreement to which the charging party is a signator. The charging party must notify the Commissioner of their intention to bring a civil action, which must be commenced within 90 days of such notice.[569]

Receipt of notice is presumed to be five days from the date of service by mail of the written notice.[570] Minnesota Rule of Civil Procedure 6.01 applies to the five-day notice period, therefore, the last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday.[571]

The Minnesota Court of Appeals has affirmed the dismissal of a civil action brought by a claimant under the MHRA who failed to notify the Commissioner of his intention to file a lawsuit.[572] The court concluded that the dismissal was appropriate even if the plaintiff had telephoned the MDHR regarding his intentions, as he alleged to the appellate court (although the fact was not supported in the record), because the action was not commenced within 90 days of the alleged telephone call. The court held that the claimant's failure to adhere to the statutory requirements contained in section 363A.33, subdivision 1(3) deprived the district court of subject matter jurisdiction over his claims.[573]

### 3.11(a)(iii) *Additional Discrimination Protections*

Minnesota law also protects against discrimination on the basis of military status and genetic information or testing, among other protections.[574]

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[568] 115 F.3d 585 (8th Cir. 1997); *see also Eldredge v. City of St. Paul*, 2011 WL 4347940, at *3 (D. Minn. Sept. 16, 2011).

[569] MINN. STAT. § 363A.33(1).

[570] MINN. STAT. § 363A.33(1).

[571] *Johnson v. Mithun*, 401 F. Supp. 2d 964 (D. Minn. 2005).

[572] *See Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. Ct. App. 1997).

[573] 560 N.W.2d at 716; *see also Ochs v. Streater, Inc.*, 568 N.W.2d 858, 860 (Minn. Ct. App. 1997) (dismissing claims under MHRA based upon failure of plaintiff to bring action by service of summons and complaint within 45-day period described in Minnesota Statute section 363.14, subd. 1(a)(1)); *Breen v. Norwest Bank Minn., N.A.*, 865 F. Supp. 574, 579 (D. Minn. 1994) (same).

[574] MINN. STAT. §§ 192.34, 181.974.

 

In addition, an employer may not refuse to hire a job applicant or discipline or discharge an employee because the individual uses or has used lawful consumable products off the employer's premises during nonworking hours.[575] However, an employer may restrict the use of lawful consumable products by employees during nonworking hours if the restriction:

- relates to a *bona fide* occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees; or
- is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by the employee to the employer.[576]

It is not a violation of this section for an employer to refuse to hire an applicant or discipline or discharge an employee who refuses or fails to comply with the conditions established by a chemical dependency treatment or aftercare program, on the basis of the applicant's or employee's past or present job performance.[577]

Due to the legalization of cannabis use in Minnesota, *lawful product* now also includes cannabis flowers, cannabis products, lower potency hemp edibles, and hemp-derived consumer products. These are considered lawful consumable products for the purpose of Minnesota law, regardless of whether federal or other state law considers cannabis use, possession, impairment, sale, or transfer of these products to be unlawful. However, this statute does not limit an employer's ability to discipline or discharge an employee for cannabis flower, cannabis product, lower-potency hemp edible, or hemp-derived consumer product use, possession, impairment, sale, or transfer during working hours, on work premises, or while operating an employer's vehicle, machinery, or equipment, or if a failure to do so would violate federal or state law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.[578]

The sole remedy for a violation of this section is a civil action for damages, limited to the wages and benefits lost by the individual because of the violation. The court will award the prevailing party (whether the plaintiff or defendant) court costs and reasonable attorneys' fees.[579]

**Captive Audience:** Employers may not threaten or take adverse action against employees for failing to attend mandatory employer sponsored meetings, or receive communications on matters relating to unionization, political or religious topics.[580]

### 3.11(a)(iv) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Minneapolis or St. Paul are subject to local fair employment practices ordinances.

- **Minneapolis.** Employers within the city of Minneapolis that hire or employ any employee, as well as any person wherever situated who hires or employs any employee whose services

[575] MINN. STAT. § 181.938(2).

[576] MINN. STAT. § 181.938(3).

[577] MINN. STAT. § 181.938(3).

[578] MINN. STAT. § 181.938(2)(b).

[579] MINN. STAT. § 181.938(4).

[580] MINN. STAT. § 181.531.

 

are to be partially or wholly performed in the City of Minneapolis, must extend antidiscrimination protections on the basis of: race; color; creed; religion; ancestry; national origin; sex (includes sexual harassment, pregnancy, childbirth, disabilities related to pregnancy or childbirth, and nursing persons); sexual orientation; gender identity; disability; age (18 years or older); marital and familial status; and status with regard to a public assistance program.[581] A complaint may be filed with the Minneapolis Department of Civil Rights only if the matter complained of occurred within one year prior to filing the complaint and the compliant has arisen from events occurring within the City of Minneapolis.[582]

- **St. Paul.** Protected classifications include: race; creed; religion; sex (includes but is not limited to gender identity, pregnancy, childbirth, disabilities related to childbirth or pregnancy, and sexual harassment); sexual or affectional orientation; color; national origin; ancestry; familial status; age (18 years or older); disability; marital status; and status with regard to public assistance. The antidiscrimination provisions apply to employers employing one or more employees within the city of St. Paul, or that solicits individuals within the city or elsewhere. Notably, the definition of *employer* also includes a person, firm, or corporation that hires temporary employees through an employment service.[583] A person has the option of filing a charge with either the St. Paul Department of Human Rights and Equal Economic Opportunity or the MDHR, but not both. The individual must file the complaint within one year of the date the alleged discriminatory practice occurred or terminated.[584]

## 3.11(b) *Equal Pay Protections*

### 3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[585] The prohibition does not

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[581] MINNEAPOLIS, MINN., CODE OF ORDINANCES §§ 139.20 (definitions), 139.30(a) (exemptions, including religious, safety considerations, and certain preemployment testing), and 139.40(b) (exception for *bona fide* occupational qualifications; reasonable accommodation obligation for employers with 15 or more permanent full-time employees). Employers and labor organizations are barred from any discriminatory practice when race, color, creed, religion, ancestry, national origin, sex, sexual orientation, familial status, gender identity, disability, age, marital status, or status with regard to a public assistance program is a *motivating* factor, except when based on a *bona fide* occupational qualification. The amendment changes the previous standard, which barred discrimination "because of" a person's membership in a protected class, whereas now membership in a protected class must be a "motivating factor" for an employer's prohibited act. MINNEAPOLIS, MINN., CODE OF ORDINANCES § 139.40(b).

[582] MINNEAPOLIS, MINN., CODE OF ORDINANCES §§ 141.50, 141.80, 391.10.

[583] ST. PAUL, MINN., CODE OF ORDINANCES §§ 183.02 (definitions), 183.03 (includes a *bona fide* occupational exception; certain employers required to reasonably accommodate disabilities), 183.031 (employment exemptions, including religious, and certain preemployment testing); *see also* ST. PAUL, MINN., CODE OF ORDINANCES §§ 184.01 *et seq.* regarding acceptable and prohibited employment inquiries.

[584] ST. PAUL, MINN., CODE OF ORDINANCES §§ 183.20, 183.170.

[585] 29 U.S.C. § 206(d)(1).

 

apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[586]

### 3.11(b)(ii) *State Guidelines on Equal Pay Protections*

The Minnesota Equal Pay for Equal Work Law prohibits employers from discriminating between employees on the basis of sex by paying wages to employees at a rate less than the rate the employer pays to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.[587] Pay differentials are permitted if payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. An employer paying a wage differential in violation of the statute cannot reduce the wage rate of any employee to comply with the statute.

An employee alleging a violation of the Equal Pay for Equal Work Law may bring a civil action for unpaid wages within two years of the alleged violation.[588]

Beginning in January 2025, employers of 30 or more employees at one or more sites in Minnesota must disclose in each posting for each job opening the starting salary range for the job position, as well as a general description of all of the benefits and other compensation, including but not limited to any health or retirement benefits, to be offered to a hired job applicant. An employer that does not plan to offer a salary range for a position must list a fixed pay rate. A salary range may not be open ended.[589]

For purposes of the pay transparency requirement, *posting* means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings made electronically or via printed hard copy, that includes qualifications for desired applicants. *Salary range* means the minimum and maximum annual salary or hourly range of compensation, based on the employer's good faith estimate, for a job opportunity of the employer at the time of the posting of an advertisement for the opportunity.[590]

As discussed in **3.7(b)(v)**, Minnesota law also prohibits employers from barring employees from disclosing their wages.

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[586] 42 U.S.C. § 2000e-5.

[587] MINN. STAT. § 181.67.

[588] MINN. STAT. §§ 181.68, 541.07.

[589] MINN. STAT. § 181.173.

[590] MINN. STAT. § 181.173.

### 3.11(c) *Pregnancy Accommodation*

#### 3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[591]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[592]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

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[591] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[592] 29 C.F.R. § 1636.3.

An employee seeking a reasonable accommodation must request an accommodation.[593] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[594] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[595]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[596]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[597]

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[593] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[594] 29 C.F.R. § 1636.3.

[595] 29 C.F.R. § 1636.4.

[596] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

 

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

### 3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Minnesota has two laws that require reasonable accommodations for pregnancy and related conditions.

**Minnesota Human Rights Act.** Under the Minnesota Human Rights Act, female employees affected by pregnancy, childbirth, or related disabilities must be treated the same as other employees who are similar in their ability or inability to work.[598] Employers must make reasonable accommodations for such employees, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business.

*Reasonable accommodation* means steps which must be taken to accommodate the known physical or mental limitations of a qualified disabled person. Such reasonable accommodations, although not necessarily required, may include:

- making facilities readily accessible to and usable by disabled persons;
- job restructuring; modified work schedules;
- reassignment to a vacant position;
- acquisition or modification of equipment or devices; and
- the provision of aides on a temporary or periodic basis.[599]

There are no provisions in the law requiring a medical certification or that the employer and employee engage in an interactive process.

**Nursing Mothers, Lactating Employees, and Pregnancy Accommodations.** Under the nursing mothers, lactating employees, and pregnancy accommodations statute, an employer must provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if the employee so requests, with the advice of the employee's licensed health care provider or certified doula.[600] An employer is not required to provide accommodation if the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business.[601]

Reasonable accommodations under this law include, but are not limited to:

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[597] 29 C.F.R. § 1636.3.

[598] MINN. STAT. §§ 363A.03, 363A.08.

[599] MINN. STAT. § 363A.08.

[600] MINN. STAT. § 181.939.

[601] MINN. STAT. § 181.939(2).

- temporary transfer to a less strenuous or hazardous position;
- seating;
- frequent restroom breaks;
- limits to heavy lifting;
- longer breaks;
- a temporary leave of absence; or
- modification of work schedule or job assignments.[602]

An employer is not required to create a new or additional position in order to accommodate an employee and is not required to discharge any employee, transfer any other employee with greater seniority, or promote any employee. Further, an employer is prohibited from: (1) retaliating against an employee for requesting or obtaining accommodation; and (2) requiring an employee to take a leave or accept an accommodation. **Effective August 1, 2024**, if the employee takes leave under the law, the employer must maintain insurance or health plan coverage for the employee and their dependents. The employee must continue to pay their share of the cost, however.[603]

Notably, the law expressly states that a pregnant employee is not required to obtain the advice of the employee's licensed health care provider or certified doula if the employee seeks one of the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. In addition, an employer cannot claim undue hardship for these specific accommodations.

Unlike under the Minnesota Human Rights Act, under the statute, the employee and employer must engage in an interactive process with respect to an employee's request for a reasonable accommodation.[604]

An employer must inform employees of the pregnancy accommodation rights under the Act: (1) at the time of hire; (2) when an employee inquires about or requests parental leave; and (3) in the employee handbook, if the employer provides an employee handbook to its employees. Information must be provided in English and the primary language of the employee as identified by the employee.[605]

### 3.11(d) *Harassment Prevention Training & Education Requirements*

#### 3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[606] Multiple decisions of the U.S. Supreme Court[607] and subsequent lower court decisions

[602] MINN. STAT. § 181.939.

[603] MINN. STAT. § 181.939, as amended by S.B. 3852 (Minn. 2024).

[604] MINN. STAT. § 181.939.

[605] MINN. STAT. § 181.939.

[606] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[607] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526(1999).

 

have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[608] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

### 3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Minnesota.

## 3.12 Miscellaneous Provisions

### 3.12(a) *Whistleblower Claims*

### 3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

### 3.12(a)(ii) *State Guidelines on Whistleblowing*

The Minnesota Whistleblower Act protects employees who make a good faith report, or refuse to carry out a violation, suspected violation, or planned violation "of any federal or state law, common law or rule adopted pursuant to law."[609]

The whistleblower statute prohibits an employer from engaging in retaliatory discharge falling within the statute.[610] An *employer* is defined as "any person having one or more employees in Minnesota and includes the state and any political subdivision of the state."[611] An employee (such as a supervisor) may not be held personally liable under the whistleblower statute.[612] Moreover, there is no liability under the

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[608] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[609] MINN. STAT. § 181.932.

[610] MINN. STAT. § 181.932(1)(1).

[611] MINN. STAT. § 181.931(3).

[612] *Obst v. Microtron*, *Inc.*, 588 N.W.2d 550 (Minn. Ct. App. 1999), *aff'd*, 614 N.W.2d 196 (Minn. 2000).

whistleblower statute where: (1) the employer knew of the problem prior to the employee's report;[613] or (2) the employee's report is made in the normal course of carrying out the employee's job duties.[614]

The legislature defined *good faith* as "any statements or disclosures" as long as the statements or disclosures are not knowingly false or made in reckless disregard of the truth. The purpose of an employee's report is irrelevant to the determination of whether the report can be the basis of a whistleblower claim. In other words, an employee doesn't have to have been attempting to expose an employer's suspected illegal conduct in order to bring a retaliation claim under the statute.[615]

## 3.12(b) *Labor Laws*

### 3.12(b)(i) *Federal Labor Laws*

*Labor law* refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[616] and the Railway Labor Act (RLA)[617] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

### 3.12(b)(ii) *Notable State Labor Laws*

The Minnesota Labor Relations Act prohibits discharge in retaliation for an employee's signing or filing an affidavit, petition, or complaint covered by the state's wage and hour act, or giving information or testifying in a proceeding conducted pursuant to that Act.[618]

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[613] 614 N.W.2d196; *see also Hitchcock v. FedEx Ground Package Sys., Inc.*, 442 F.3d 1104 (8th Cir. 2006) (whistleblower claim fails where employee reports what employer already knew).

[614] *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220 (Minn. 2010); *Skare v. Extendicare Health Servs.*,515 F.3d 836, 841 (8th Cir. 2008) ("The [Whistleblower Act] does not grant protection to an employee whose job duties require him or her to ensure legal compliance.").

[615] MINN. STAT. §§ 181.931(4), 181.932(3); *Friedlander v. Edwards Lifesciences, L.L.C.*, 900 N.W.2d 162 (Minn. 2017).

[616] 29 U.S.C. §§ 151 to 169.

[617] 45 U.S.C. §§ 151 *et seq*.

[618] MINN. STAT. § 179.12(4).

 

# 4. END OF EMPLOYMENT

## 4.1 Plant Closings & Mass Layoffs

### 4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[619] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[620] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

### 4.1(b) *State Mini-WARN Act*

Minnesota law requires employers providing notice of a plant closing, substantial layoff, or relocation of operations under the federal WARN Act to report to the state Commissioner of Economic Security the names, addresses, and occupations of the employees who will be or have been terminated.[621]

### 4.1(c) *State Mass Layoff Notification Requirements*

As noted in 4.1(b), Minnesota requires notice to the state Commissioner of Economic Security in the event of a plant closing, substantial layoff, or relocation of operations.

## 4.2 Documentation to Provide When Employment Ends

### 4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 10 lists the documents that must be provided when employment ends under federal law.

**Table 10. Federal Documents to Provide at End of Employment**

| Category | Notes |
|---|---|
| **Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)** | Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[622] The notice must be provided not later than the earlier of: |

[619] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[620] 20 C.F.R. §§ 639.4, 639.6.

[621] MINN. STAT. § 116L.976.

[622] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

| Table 10. Federal Documents to Provide at End of Employment | |
|---|---|
| **Category** | **Notes** |
| | • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or<br>• the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage. |
| **Retirement Benefits** | The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[623] |

### 4.2(b) *State Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under state law.

| Table 11. State Documents to Provide at End of Employment | |
|---|---|
| **Category** | **Notes** |
| **Health Benefits: mini-COBRA, etc.** | If an eligible employee is terminated or laid off, the employer must inform the employee within 14 days after termination or lay off of:<br>1. the right to elect to continue health coverage;<br>2. the amount the employee must pay monthly to the employer to retain the coverage;<br>3. the manner in which and the office of the employer to which the payment to the employer must be made; and<br>4. the time by which the payments to the employer must be made to retain coverage.<br><br>Notice must be in writing and sent, by first-class mail, to the employee's last known address as provided by the employee. If the policy, contract, or health care plan is administered by a trust, the employer is relieved of this obligation, and the administrator-trust must comply.[624] |
| **Reasons for Termination Letter** | An employee who has been involuntarily terminated may, within 15 working days from separation, request in writing that the employer explain its decision. Upon such request, an employer must inform the former employee in writing of the truthful reason for the termination, within 10 working days following receipt of the request. Communication of the |

[623] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[624] MINN. STAT. § 62A.17(5).

| Table 11. State Documents to Provide at End of Employment | |
|---|---|
| **Category** | **Notes** |
| | employer's statement to the employee cannot be the basis for an action for libel, slander, or defamation.[625] |
| **Unemployment Notice** | **Generally.** Minnesota does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, the employer generally must post notice in readily accessible places, informing employees about unemployment insurance and how to file a claim for benefits. Accordingly, it is recommended that an employer provide a copy of that unemployment notice when employment ends.[626]<br><br>**Multistate Workers.** Minnesota does not require that employees be again notified as to the jurisdiction under whose unemployment compensation law services have been covered.[627] It is recommended, however, that employers consider providing notice of the jurisdiction where services will be covered for unemployment purposes. Employers should also follow that state's general notice requirement, if applicable. |

## 4.3 Providing References for Former Employees

### 4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

### 4.3(b) *State Guidelines on References*

**Blacklisting.** The Minnesota legislature has made it an unfair labor practice "to distribute or circulate a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing individuals who are blacklisted from obtaining or retaining employment."[628]

**References.** The Minnesota employment reference statute provides that no action may be maintained against a private employer unless it can be demonstrated, by clear and convincing evidence, that: (1) the information in the reference was false and defamatory; and (2) the employer knew or should have known the information was false and acted with malicious intent to injure the current or former employee.[629] In response to a request for information, the employer may disclose:

1. dates of employment;
2. compensation and wage history;

[625] MINN. STAT. § 181.933.

[626] MINN. STAT. § 268.068. This notice is available in English at http://uimn.org/assets/109_tcm1068-192562.pdf. It is also available in Hmong, Somali, and Spanish at http://www.uimn.org/employers/help-and-support/posters.jsp.

[627] MINN. STAT. § 268.131 (Reciprocal Unemployment Benefit Arrangements).

[628] MINN. STAT. § 179.12(6).

[629] MINN. STAT. § 181.967(2).

3. job description and duties;
4. training and education provided by the employer; and
5. acts of violence, theft, harassment, or illegal conduct documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response, if any, contained in the employee's personnel record.[630]

A disclosure under clause (5) must be in writing with a copy sent contemporaneously by regular mail to the employee's last known address.[631]

Moreover, with the written authorization of the current or former employee, a private employer may also, in writing, disclose:

1. written employee evaluations;
2. written disciplinary warnings and actions in the five years before the date of authorization; and
3. written reasons for separation from employment.[632]

The employer must contemporaneously provide the employee or former employee with a copy of the disclosed written information and to whom it was disclosed.[633]

[630] MINN. STAT. § 181.967(3)(a).

[631] MINN. STAT. § 181.967(3)(a).

[632] MINN. STAT. § 181.967(3)(b).

[633] MINN. STAT. § 181.967(3)(b).