

**MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS
RULES IMPLEMENTING THE MINNEAPOLIS WAGE THEFT ORDINANCE**

Rule 1. Definitions.

- 1.1 *Ordinance* means the Minneapolis Code of Ordinances, Title 2, Chapter 40, Article V
- 1.2 *City* means the City of Minneapolis.
- 1.3 *Reported Violation* means the alleged violation of Chapter 40, Article V, reported on the Department's "Report of Violation" form and submitted to the Department.
- 1.4 *Benefit Year* means a regular and consecutive twelve (12) month period of time as determined by an Employer.
- 1.5 Unless defined above, the capitalized words used in these rules are defined in the Ordinance, section 40.520.

Rule 2. Covered Employees.

- 2.1 An individual is considered an Employee for purposes of the Ordinance if the individual performs work for an Employer for at least 80 hours in a Benefit Year while the individual is physically located in Minneapolis, regardless of the location of the Employer. Employers are not required to track progress towards this threshold for each and every Employee, especially where employees clearly exceed the 80 hour threshold. However, if an Employee presents evidence reasonably showing that the Employee has performed at least 80 hours of work for the Employer in a Benefit Year within the City, the Employer will have the responsibility of producing evidence that shows otherwise.
- 2.2 Hours spent travelling through the City do not count toward the 80-hour requirement for coverage under the Ordinance if the individual makes no stops for work purposes, or makes only incidental stops not considered to be duties or functions of the job (e.g. purchasing gas, eating a meal, or changing a flat tire).
- 2.3 An individual who travels through the City and stops in the City as a purpose of their work (e.g. to make pickups or deliveries or perform other job duties), is covered by the Ordinance for all hours worked in the City. However, the Ordinance and this rule apply only if the individual performs at least 80 hours of work in the City within a Benefit Year.
- 2.4 An individual who attends a convention, conference, training, educational class, or similar in the City, but performs no other work in the City for an Employer, is not covered by the Ordinance.

Draft Rules Published October 3, 2019

- 2.5 An Employer may make a reasonable estimate of an Employee's time spent working in the City. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, employee logs, delivery addresses and estimated travel times, or historical averages.
- 2.6 An Employee, who is otherwise covered by the Ordinance, is covered regardless of immigration status.

Rule 3: Enforcement by the Department.

- 3.1 Any Employee or person may report an alleged violation of the Ordinance, using the Department's "Report of Violation" form, to the Minneapolis Department of Civil Rights Labor Standards Enforcement Division in person, online, by U.S. Mail or by email.
- 3.2 The Department may investigate an anonymous report of a suspected violation pursuant to the requirements of Rule 4.1.
- 3.3 The Department shall provide a simple form for reports of violation.
- 3.4 Reported Violations must be filed within two years of an alleged violation, unless the violation is also alleged to be willful. If the violation is alleged to be willful (not due to mistake), the Reported Violation must be filed within three years of the alleged violation.
- 3.5 A Reported Violation must include a description of the facts that form the basis of the alleged violation(s), and should, when possible, include approximate date(s) of the alleged violation(s), the names and contact information of person(s) with personal knowledge of the facts alleged, and documents or other evidentiary material.
- 3.6 The Department has sole discretion to decide whether to investigate, prioritize or pursue a violation of the Ordinance. The Department may not investigate a Reported Violation that is frivolous on its face, undefined or does not identify the alleged violator.
- 3.7 The Department may provide technical assistance or otherwise attempt to settle a dispute informally.
- 3.8 The Minnesota Government Data Practices Act governs the data provided to the Department.
- 3.9 If the Department decides not to investigate or otherwise pursue a Reported Violation, the Department must provide a written notification to the reporter and include an explanation of its decision and the reporter's rights to appeal. The reporter may, within 21 calendar days of the date of the written notification, file a request for reconsideration with the Director. The Director shall respond in writing to the request for reconsideration within 10 calendar days.
- 3.10 The Department shall not investigate any Reported Violation made by or on behalf of an Employee if it knows that the Employee has commenced a civil action arising from the same facts or circumstances, unless the civil action is first dismissed without prejudice. An Employer may notify the Department in writing that a civil action has been commenced by providing a copy of the civil complaint.

Rule 4. Investigation process.

- 4.1 The Department may conduct an investigation on its own initiative or following receipt of a Reported Violation.
- 4.2 Upon a Department decision to pursue an investigation, the Department shall send, by U.S. mail, a notice of investigation to the Employer. The notice of investigation shall include pertinent facts, allegations, and jurisdictional authority.
- 4.3 A warning not to retaliate against Employees shall accompany the notice of investigation.
- 4.4 An Employer shall submit all payroll and time records or other data requested by the Department in the format requested by the Department.
- 4.5 An Employer may submit to the department any additional documentation, evidence, or written information it deems necessary.
- 4.6 Employer responses must be submitted within 21 calendar days of the date of the notice to the Employer.
- 4.7 When deemed appropriate by the Director, the Department may hold fact finding or settlement conferences during the investigation of a Reported Violation to identify undisputed elements of a Reported Violation, define and resolve the disputed elements of the Reported Violation, or attempt to settle the dispute through negotiated agreement. The Director shall provide written notice of such a conference at least 10 calendar days in advance.
- 4.8 An Employer's failure to timely and fully respond to a request issued by the Department or refusal to reasonably participate in a fact-finding or settlement conference creates a rebuttable presumption of a violation.
- 4.9 The Director may extend any of the time limits in this Rule for a reasonable period upon request or upon the Director's initiative to promote full and fair proceedings.

Rule 5. Disposition of Investigation.

- 5.1 The Department may negotiate a settlement of the investigation prior to the issuance of a determination.
- 5.2 Except where the matter is settled prior to issuance of a determination or where the Department declines to pursue a Reported Violation, the Department shall issue a written determination and findings of fact resulting from its investigation and a statement of whether a violation occurred based upon a preponderance of the evidence. Such a determination shall be issued in writing to the Employer and reporter and include explanation of rights to appeal.
- 5.3 The Department may order any appropriate relief as a result of its investigation and determination including, but not limited to, administrative fines and remedies listed in section 40.580(d)) of the Ordinance.

Draft Rules Published October 3, 2019

- 5.4 If the Department has found that a violation occurred which affected Employees other than the reporter, and that determination has become final and unappealable, the Department may provide the Employer with a summary of the determination suitable for posting in the workplace. If the Department provides this summary to the Employer, the Employer shall post it in a conspicuous place in the workplace for thirty (30) days.
- 5.4 The Department may publish on its website a list of Employers that have been ordered to pay damages, fines and/or costs and who have failed or refused to do so. No Employer shall be placed on this list unless the order has become final and unappealable and at least thirty (30) days have passed since the order became final. The Department will place an Employer on this list only after receiving affirmative evidence that the damages, fines and/or costs remain unpaid. If an Employer has been placed on this list and wishes to be removed, the Employer has the responsibility of providing the Department with satisfactory evidence that all unpaid amounts have been paid.

Rule 6. Appeals

- 6.1 A reporter or Employer may appeal a determination by filing an appeal in writing to the Department within 21 calendar days from the date of service of the written determination.
- 6.2 In addition to procedures specified in Minneapolis Code of Ordinances § 40.130, appeals shall be governed by Minneapolis Code of Ordinances, Title 1, Chapter 2, Administrative Enforcement and Hearing Process, section 2.100.
- 6.3 The hearing officer shall consider the record submitted to it by the Department and any written position statements submitted by the parties. A party may not produce new information for the purpose of challenging the Department's findings or an administrative fine if the information was previously available yet not submitted. This rule shall not prevent the hearing officer from taking testimony in the discretion of the hearing officer.