



## Legislation Text

File #: Ord 25-56, Version: 1

Amending Chapter 224A of the Legislative Code to clarify record production processes.

### SECTION 1

WHEREAS, the City of Saint Paul (the "City") passed Saint Paul Legislative Code, Chapter 224A, Wage Theft (the "Ordinance"), on November 6, 2024, to eliminate and prevent the theft of wages earned by persons working within the geographic boundaries of the City; and

WHEREAS, the City's Human Rights and Equal Economic Opportunity Department (the "Department") investigates and enforces the Ordinance and to strengthen those investigations and enforcement, the City wishes to amend the Ordinance to incorporate the process for the Department to petition the court for an administrative search warrant to obtain documents when necessary; and now, therefore, be it

RESOLVED, that the City Council of the City of Saint Paul does hereby ordain:

### SECTION 2

Section 224A.02 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### Sec. 224A.02 Definitions.

For the purposes of this chapter, the following definitions apply:

*City* means the City of Saint Paul.

*Debarment* means that that no public contract with the City may be bid on, awarded to, or received by an Employer.

*Department* means the Department of Human Rights and Equal Economic Opportunity or any department or office that by ordinance is designated the successor to the Department.

*Director* means the Director of the Department of Human Rights and Equal Economic Opportunity, or the Director's designee.

*Employee* has the meaning given in Minn. Stat., § 177.23 Subd. 7. and any amendments thereto. For purposes of this ~~article~~chapter, "Employee" does not include the following:

- (1) ~~Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.2005, subpart 18 and~~ Individuals participating in the Minn. Stat., § 268A.15 extended employment program under Minnesota Statutes, ection 268A.15.
- (2) Persons with disabilities receiving home and community-based services identified in Minn. Stat. § 245D.03, subdivision 1, paragraph C, clauses (4), (5), (6) and (7).
- (3) Independent contractors.

*Employer* means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an Employer in relation to an Employee. For purposes of this ~~article~~chapter,

"Employer" does not include any of the following:

- (1) The United States government.
- (2) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
- (3) Any county or local government, except the City of Saint Paul.

*Fringe Benefits* mean contributions irrevocably made by an Employer on behalf of an Employee to a financially responsible trustee, third person, fund, plan, or program, such as pension plans, health insurance, and life insurance. Fringe benefits also include benefits to an Employee, funded from an Employer, such as holiday, vacation, and sick pay plans. All bonafide fringe benefits must be legally enforceable, communicated in writing to the Employee, reasonably anticipated to provide a benefit, and made available to the Employee once they have met all eligibility requirements.

*Gratuities* mean monetary contributions received directly or indirectly by an Employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests, or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an Employee and for which no clear and conspicuous notice is given by the Employer to the customer, guest, or patron that the charge will not be given to the Employee as wages or gratuity.

*Indemnification* means an agreement by a promisor to indemnify, defend, or hold harmless the promisee against liability or claims of liability for damages arising out of violations of this chapter.

*Piece rate* means a price paid per unit of work.

*Wage* means all compensation due to an Employee by reason of employment, payable in legal tender of the United States, checks on banks convertible into cash on demand at full face value, direct deposit to the Employee's choice of demand deposit account. Compensation includes but is not limited to:

- (1) All salary, gratuities, earnings, and commissions, at the Employee's rate or rates or pay, or the applicable rate or rates of pay required by law, whichever is greater;
- (2) All fringe benefits earned in accordance with the terms of any agreement or policy between an Employer and Employee;
- (3) Bonuses earned for labor or services performed in accordance with the terms of any agreement or policy between an Employer and Employee;
- (4) Vacation pay earned in accordance with the terms of any agreement or policy between the Employer and the Employee;
- (5) All amounts for labor or service performed by Employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment.

*Wage theft* means any action taken by an Employer or an Employer's agents, which results in the failure of an Employer to pay wages to Employees. Wage theft includes but is not limited to when an Employer:

- (1) Fails to pay an Employee all wages including salary, gratuities, earnings, or commissions at the Employee's rate or rates of pay or at the rate or rates required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater;
- (2) Directly or indirectly causes any Employee to give a receipt for wages for a greater amount than that actually paid to the Employee for services rendered;
- (3) Directly or indirectly demands or receives from any Employee any rebate or refund from the wages owed the Employee under contract of employment with the Employer;
- (4) Makes or attempts to make it appear in any manner that the wages paid to any Employee were greater than the amount actually paid to the Employee; or
- (5) Takes any other action that results in the Employer's failure to pay an Employee's wages, including but not limited to paying below minimum wage rates, not paying overtime, requiring work without pay, denying legal breaks, withholding gratuities, misclassifying Employees, not paying earned sick and safe time, withholding tips, making illegal or unauthorized deductions, or not paying fringe benefits.

### SECTION 3

Section 224A.06 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### **Sec. 224A.06 Employee wage notice.**

- (a) At the start of employment, an Employer must provide to each Employee a written notice containing the following information:
- (1) The information required by Minn. Stat. § 181.032(d) and any amendments thereto, including:
    - (a) 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;
    - (b) allowances, if any, claimed pursuant to permitted meals and lodging;
    - (c) paid vacation, sick time, or other paid time-off accruals and terms of use;
    - (d) the Employee's employment status and whether the Employee is exempt from minimum wage, overtime, and other provisions of Minnesota Statutes, Chapter 177, and on what basis;
    - (e) a list of deductions that may be made from the Employee's pay;
    - (f) the number of days in the pay period, the regularly scheduled pay day, and the pay day on which the Employee will receive the first payment of wages earned;
    - (g) the legal name of the Employer and the operating name of the Employer if different from the legal name;
    - (h) the physical address of the Employer's main office or principal place of business, and a mailing address if different; and
    - (i) the telephone number of the Employer;
  - (2) The date on which the employment is to begin;
  - (3) Notice of City minimum wage rates and their entitlement to such rates;
  - (4) A statement that the sharing of gratuities is voluntary, in accordance with Minn. Stat. §177.24, Subd. 3, and any amendments thereto, if applicable to the employee; and,
  - (5) The overtime policy applicable to the Employee's position, if any, including when overtime must be paid and the applicable rate or rates of pay; and
- (b) The written notice may provide the information required in this section by explicit reference to an Employee handbook, collective bargaining agreement, or similar document if Employees are directed to the specific sections of the handbook in which such information is provided.
- (c) The Employer must keep a copy of the notice under subsection (a) signed by each Employee acknowledging receipt of the notice, along with the date the notice was received by the Employee.
- (d) An Employer must provide the Employee any written changes to the information contained in the notice under subsection (a) prior to the date the changes take effect. The Employer must keep a copy of the written changes, along with the date the notice was received by the Employee.
- (e) The Employer must provide to the Employee a copy of any notices required of this chapter. The Employer may provide the notice in English unless the Employer has previously communicated with the Employee in another language or been made aware that the Employee prefers another language, in which case the notice must be provided in that language if published by the Department.
- (f) This Employee wage notice requirement is in addition to any additional Employee wage or recruitment notices that may be required by other applicable City, state, or federal laws.
- (g) An Employer must provide the Employee wage notice to all current Employees as of the effective date of this chapter if all the information contained in the Employee wage notice has not already been provided to the Employee.

### SECTION 4

Section 224A.08 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### **Sec. 224A.08. Employer recordkeeping.**

- (a) An Employer must create and maintain the following records demonstrating compliance with this chapter and provide to the Department such records upon request:
- (1) The name, address, phone number, email, and position of each Employee;
  - (2) The rate of pay, and the amount paid each pay period to each Employee;
  - (3) The hours worked each day and each workweek for Employees paid on an hourly basis; the number of pieces completed for Employees paid at a piece rate; and the method of calculating commissions for Employees paid on a commission basis;
  - (4) The statements of earnings required by Section 224A.07 of this chapter;
  - (5) The Employee wage notice(s) and changes thereto required by Section 224A.06 of this chapter;
  - (6) A copy of all personnel policies provided to the Employee, including the date the policies were given to the Employee and a brief description of the policies.
  - (7) Other information the Director finds necessary and appropriate to enforce the law.
- (b) Records required by this chapter must be retained while the Employee is employed by the Employer and for at least three (3) years after the termination of the employment, except for the required statement of earnings, which must be retained for at least three (3) years after the date upon which the statement was provided to the Employee.
- (c) ~~If requested, a~~An Employer must allow an Employee to inspect records required by this chapter relating to the Employee at a reasonable time and in a reasonable manner
- (d) ~~Employers must allow the department access to such records, with appropriate notice, in order~~The Department may request access to such records to investigate potential violations and to monitor compliance with the requirements of this chapter. ~~If an Employer refuses to provide such records within a reasonable time, the Department may petition Ramsey County district court for an administrative search warrant for such records.~~
- (e) Social security numbers and Employees' personal addresses ~~will~~must not become a matter of public record.
- (f) In addition to such records listed in paragraph (a) of this section, ~~employers must allow the Department access to~~ may request or seek an administrative search warrant for any other information, documents, or evidence the Department finds necessary and reasonably related to an investigation of an alleged violation of this chapter.
- (g) ~~When an issue arises as to an Employee's wages under this chapter, if~~ It is presumed that the Employer has violated this chapter, absent clear and convincing evidence otherwise, if:
- (1) ~~†~~The Employer does not maintain or retain adequate records, as shown following the execution of an administrative search warrant for such records; or
  - (2) The Employer does not produce adequate records following the execution of an administrative search warrant for said records~~it will be presumed that the Employer has violated this chapter, absent clear and convincing evidence otherwise.~~
- (h) If the records maintained by the Employer do not provide sufficient information to determine the exact amount of wages due an Employee, the Department may make a determination of wages due based on available evidence.
- (i) Records and documents relating to medical certifications, re-certifications, or medical histories of Employees or Employees' family members created for purposes of this chapter must be maintained as confidential medical records separate from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA's confidentiality requirements.

## SECTION 5

Section 224A.09 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 224A.09 Notice and posting.**

- (a) The Department must publish and make available to Employers notices suitable for posting by Employers in the workplace informing Employees of their rights under this chapter. The Department may create combined notice information from other chapters of the Saint Paul Legislative Code that are also enforced by the Department.
- (b) Every Employer must post, in a conspicuous place at any workplace or job site in the City where any Employee works, where they can be readily observed and easily reviewed by Employees, the City-provided notices required by subsection (a). Every Employer must post the city-provided notices in English, and in any language spoken by Employees at the workplace or job site. If the Employees do not perform work at a workplace or job site in which the City-provided notices may be posted, this requirement may be satisfied by providing physical or electronic copies of the notices to each Employee or posting in a web- based or app-based platform through which an Employee performs work.

- (c) On an annual basis, Employers must give notice ~~on an annual basis~~ to Employees of their rights under this chapter, including, but not limited to, their right to be protected against that wage theft is prohibited, that an Employee has and their right to report a violation, and notice that retaliation by an Employer against an Employee is prohibited.
- (d) An Employer that provides an Employee handbook to its Employees must include in the handbook notice of Employee rights under this chapter.

## SECTION 6

Section 224A.12 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 224A.12 Investigation and eEnforcement.**

- (a) *Report of violations.* An Employee or other person may report to the Department any suspected violation of this chapter. Such reports may be filed only if the matter complained of occurred after the effective date of this chapter and within two (2) years prior to filing the report.
- (b) *Investigation process.* The Department ~~will have~~has the authority to investigate possible violations of this chapter whenever it has reason to believe that any violation of this chapter has occurred including but not limited to: on the basis of a report of a suspected violation, on the basis of any other credible information including violations found during the course of an investigation, when circumstances show that violations are likely to occur within a class of businesses because the workforce contains a significant number of Employees who are vulnerable to violations of this chapter or the workforce is unlikely to volunteer information regarding such violations.
  - (1) *Notice of investigation.* To pursue a violation of this chapter, the Director must serve upon an Employer via U.S. mail a notice of investigation setting forth the allegations and pertinent facts. The notice of investigation must be accompanied by a request for a written position statement and may include a request for records or other information. The notice must also inform the Employer that retaliation for claiming rights under this chapter is a violation of this chapter and a basis for additional monetary damages. Within seven (7) days of the notice of investigation, an Employer must post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department and displaying it on-site, in a conspicuous and accessible location. The notice must be in English and the primary language of the Employee(s) at the particular workplace. If display of the form is not feasible, including situations when the Employee works remotely or does not have a regular workplace, Employers may provide the form on an individual basis in the Employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.
  - (2) An Employer's position and response to any request for records must be provided to the Department as provided in the Department's rules. An Employer's failure to provide a position statement or to provide a full response to a request for records following the issuance of an administrative search warrant for such records, or any other reasonable request issued by the Department pursuant to an investigation, within thirty (30) days of such request the issuance of the administrative search warrant creates a rebuttable presumption of a violation of this chapter. An Employer that fails to respond to a request for records following the issuance of an administrative search warrant for such records may not use ~~such records or any~~ records not provided to the Department at any hearing held under this chapter, unless the Employer can show they had good cause to withhold the records.
  - (3) Investigations must be conducted in an objective and impartial manner.
  - (4) The Department must consider any statement of position or evidence with respect to the alleged violation which the complainant or Employer wishes to submit.
  - (5) The Department may interview in private Employees regarding a matter under investigation.
  - (6) In order to define the issues, determine which elements are undisputed, resolve those issues that can be resolved, and afford an opportunity to discuss or negotiate settlement, during investigation the Department may require a fact-finding conference or participation in another process, including but not limited to an investigative interview with the Employer or the complainant or any of their agents and witnesses.
  - (7) Upon the consent of the Employer, the Director or an authorized representative may enter and inspect places of employment, during normal working hours, and inspect relevant information, including but not limited to the documents required by Section 224A.08 of this chapter, to enforce the law within the Department's jurisdiction and to carry out the purposes of this chapter. If an Employer refuses to permit entry into the Employer's place of employment, the Director may apply for an administrative order in district court in the county in which the

place of employment is located requiring the Employer to permit entry of the Director or an authorized representative.

- (c) *Director notice of violation/determination of no violation.* Except when there is an agreed upon settlement, the Director must issue either a written notice of violation or a written notice of determination of no violation. In the case of a notice of a determination of no violation, the Department must state the reason for declining. Every notice must be issued to the Employer and the complainant who filed the suspected violation report. The complainant may, within twenty-one (21) days, file a request for reconsideration of a notice of determination of no violation with the Director. The Director must provide a written response on the reconsideration within ten (10) days.
- (d) An Employee or other person who has reported a violation of this chapter may:
- (1) Bring a civil action in district court within forty-five (45) days after receipt of a notice of determination of no violation of this chapter.
  - (2) Bring a civil action in district court within forty-five (45) days upon notice that the Director has reaffirmed a determination of no violation of this chapter if the complainant requested reconsideration.
  - (3) For purposes of this clauses (1) and (2), notice is presumed to be five (5) days from the date of service by mail of the written notice.
- (e) *Contents of notice of violation.* If the Department determines that cause exists to believe that an Employer has violated this chapter, the Department ~~will~~must issue a notice of violation for failure to pay wages to the Employer. The notice ~~will~~must advise the Employer of the following ~~but may not be limited to:~~
- (1) That the City believes the Employer has failed to pay wages;
  - (2) The basis for the City's belief;
  - (3) The amount of restitution owed and penalty sought;
  - (4) That the Employer is entitled to a hearing before any restitution or penalty is imposed; and
  - (5) That the Employer can choose to admit or deny the allegations.
    - (a) If the Employer wishes to admit the allegations but contest the proposed restitution or sanction, the Employer may request a hearing before the city council regarding the proposed restitution or, if applicable, penalty.
    - (b) If the Employer wishes to deny the allegations, then the Employer must request a hearing before a hearing examiner.
    - (c) Failure to respond in writing within fifteen (15) working days of the notice of violation will be deemed an admission of the allegations and acceptance of the proposed restitution and, if applicable, penalty.
- (f) *Hearing before hearing examiner when denying allegations.*
- (1) The hearing examiner ~~will~~is responsible for hearing all evidence as may be presented on behalf of the City and the Employer. Both parties ~~will~~must be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in their discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. Following the hearing, the hearing examiner ~~will~~must present to the city council proposed written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.
  - (2) *Record; evidence.* The hearing examiner ~~will~~is responsible for receive and keep receiving and keeping record of such proceedings, including testimony and exhibits, and must receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
  - (3) The City must prove that the Employer failed to pay wages by a preponderance of the evidence.
- (g) *City Council determination.*
- (1) The city council ~~will~~is responsible for consider considering the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and must not consider any factual testimony not previously submitted to and considered by the hearing examiner. The city council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.
  - (2) *City Council action.* The city council ~~will~~is responsible for determine determining whether the Employer has failed to pay wages and must by resolution determine whether to adopt all or part of the findings, conclusions and recommendations of the hearing examiner.
  - (3) *Imposition of costs.* The city council may impose upon any respondent some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the costs of the hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The city council may impose all or part of such costs in any given case if the position, claim or defense of the Employer was frivolous, arbitrary or capricious, made in bad faith, or made for

the purpose of delay or harassment.

(h) *Failure to exhaust administrative remedies.* If there is no appeal of the Director's determination of a violation or no violation, that determination constitutes the City's final decision. The failure to appeal the Director's determination by either the Employer or complainant constitutes a failure to exhaust administrative remedies, ~~which will serve~~ and serves as a complete defense to any petition or claim regarding the Director's determination.

## SECTION 7

Sections 224A.16 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 224A.16 Preemption.**

Nothing in this ~~article~~ chapter is to be interpreted or applied so as to create any power or duty in conflict with federal or state law. No provision of this ~~article~~ chapter applies to any Employer that is operating under the protection of the bankruptcy court or under receivership or under a trustee appointed by a court of competent jurisdiction.

## SECTION 8

Sections 224A.17 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 224A.17 No assumption of liability.**

In undertaking the adoption and enforcement of this ~~article~~ chapter, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, nor is it imposing on its officers and Employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This ~~article~~ chapter does not create a legally enforceable right against the City.

## SECTION 9

Sections 224A.18 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 224A.18 Severability.**

If any of the parts or provisions of this ~~article~~ chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this ~~article~~ chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, ~~willis~~ will not be affected thereby and will continue in full force and effect. To this end, the provisions of this ~~article~~ chapter are severable.

## SECTION 10

This ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.