

## Administrative Rules for the Enforcement of Saint Paul Minimum Wage Ordinance

### Rule 1. Definitions

- 1.1 *City* means the City of Saint Paul.
- 1.2 *Contracting employer* means a business that hires temporary workers under contract from a third-party staffing agency.
- 1.3 *Council* means the Saint Paul City Council.
- 1.4 *Department* means HREEO (Saint Paul Department of Human Rights and Equal Economic Opportunity).
- 1.5 *Director* means the director of HREEO.
- 1.6 *Full-Service Restaurant* means a restaurant with seated service.
- 1.7 *Ordinance* means the Saint Paul Code of Ordinances, Part II, Title XXIII, Chapter 224.
- 1.8 *Youth* means an employee eligible for an adjusted wage if they are either under the age of twenty in a city-approved training program or an employee fourteen (14) to seventeen (17) years old for the first ninety days of employment.
- 1.9 Unless defined above, the capitalized words in these rules are defined in the Ordinance.

### Rule 2. General Provisions

- 2.1 These rules govern the practices of the Department in administering requirements for minimum wage under the Ordinance.
- 2.2 If a matter arises in administering the Ordinance that is not specifically covered by these rules, the Department will specify the practices to be followed in accordance with applicable law.
- 2.3 The Ordinance and these rules shall be liberally construed to permit the Department to accomplish its administrative duties pursuant to the ordinance.
- 2.4 Persons exempt from Minnesota Statute §177.23, which defines “employee” for the state minimum wage law, are also exempt from the Saint Paul Minimum Wage Ordinance, except that all City employees are covered by the Ordinance. Employers may pay certain youth employees and trainees an adjusted minimum wage in limited circumstances (Rule 4.2). The Ordinance does not apply to:

- a. Persons with “severe impairment to employment” who receive extended employment services under the Minnesota Extended Employment Program.
  - b. Persons with disabilities receiving licensed home and community-based services, if the employment receives intensive support services (e.g. day services, employment exploration, development, or support services under the brain injury, community alternative care, community access for disability inclusion, and developmental disability waiver plans).
  - c. Independent contractors.
- 2.5 The Department has the discretion to investigate a complaint and decide whether bring forth a Notice of Violation against an employer. An employee or other person who has reported a violation of this chapter may bring a civil action in district court within forty-five (days):
- a. after receipt of a notice of determination of no violation of this chapter
- OR
- b. upon notice the director has reaffirmed a determination of no violation of this chapter if the complainant requested reconsideration.
- Notice is presumed to be five (5) days from the date of service by mail of the written notice.
- 2.6 The Minnesota Government Data Practices Act governs the characterization of data provided and gathered by the Department.
- 2.7 Retaliation for exercising one’s rights under the Ordinance is strictly prohibited. There is a rebuttable presumption of retaliation if any employee or other person takes adverse action against a person within ninety (90) days of a person exercising their rights under this Ordinance. The complaint or communication triggers protection under the Ordinance regardless of whether the complaint or communication is in writing or refers to the chapter.

**Rule 3. Outreach and Community Engagement**

- 3.1 The Department will provide all required notices to employers and employees.
- 3.2 Current minimum wage information (e.g. rates, notices, FAQs, and rules) will be maintained on the Department’s website.

- 3.3 The Department will provide information regarding the Ordinance to employers, employees, and third-parties upon request in person, by email, by complaint, or over the phone.
- 3.4 The Department’s outreach efforts may include engaging community partners and the business community.
- 3.5 The Department will conduct ongoing outreach as the City minimum wage is implemented.
- 3.6 The Department may conduct employer audits to ensure continued compliance with the Ordinance.

**Rule 4. Adjustments to the City Minimum Wage**

- 4.1 If an adjusted wage is ever less than the State of Minnesota Minimum Wage, employers must follow the State Minimum Wage.
- 4.2 There is no adjustment for gratuities or medical benefits.
  - a. No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the City minimum wage.
  - b. No employer may directly or indirectly credit, apply, or utilize medical benefits towards payment of the City minimum wage.
- 4.2 Youth Wage: Youth employees and trainees may be paid less than the minimum wage during the eligibility period if they are fourteen (14) to seventeen (17) years old. The eligibility period runs for 90 consecutive calendar days (not days of work) beginning with the first day of work for an employer.
  - a. The Youth Wage is no less than 85% of the City minimum wage for small businesses, rounded to the nearest nickel, for the first 90 consecutive calendar days after initial employment. The Youth Wage schedule is:

Date Effective	Youth Wage
July 1, 2020	\$8.50
July 1, 2021	\$9.35
July 1, 2022	\$10.20
July 1, 2023	\$11.05
July 1, 2024	\$11.90
July 1, 2025	\$12.75

After July 1, 2025	85% of the City minimum wage, rounded to the nearest nickel
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- b. After more than 90-days after the date of hire, employees who are fourteen (14) to seventeen (17) years of age must be paid at least the City minimum wage.
- c. The youth wage no longer applies once an employee turns 18. The employer must immediately pay the full minimum wage and may not wait until the end of the initial 90 days.

4.3 Youth Training Program: City-approved Youth Training Programs may pay an adjusted minimum wage. If employers employ youth workers under twenty (20) years old in a city-approved youth-focused training or apprenticeship program, the minimum wage rate cannot be less than eighty-five (85) percent of the city minimum wage for small employers, rounded up to the nearest nickel. The Youth Training Wage schedule is:

Date Effective	Youth Training Wage
July 1, 2020	\$8.50
July 1, 2021	\$9.35
July 1, 2022	\$10.20
July 1, 2023	\$11.05
July 1, 2024	\$11.90
July 1, 2025	\$12.75
After July 1, 2025	85% of the City minimum wage, rounded to the nearest nickel

There are two ways to qualify as a City Approved Youth Training Program:

- a. Programs that receive local/state/federal grants or direct appropriations for youth workforce development (qualified funding sources) will automatically be included in the approved programs.
- b. Youth Programs that do not have qualified funding sources must include the following program components:
  1. *Work Readiness Training*. Work Readiness Training means training for a minimum of six (6) hours in Communication Skills, Teamwork/Collaboration, and Time Management. Work Readiness Training must also include training for at least two (2) of the following components:
    - i. Job Basics
    - ii. Work Ethic
    - iii. Problem Solving.
  2. Youth programs without qualified funding sources must include at least **one** of the following program components;

- i. The youth employee has at least one professional development opportunity in the first 90 days of employment,
    - ii. The youth employee has at least one job shadowing opportunity in the first 90 days of employment,
    - iii. The youth employee earns academic credit through the training opportunity.
  - 3. Supervisory Requirements: To qualify as a youth training program without qualified funding, supervisors are required to complete at least two (2) hours of training in Cultural Competency, Adolescent Development, Mentorship, and how to create an effective project-based learning plan.
  - 4. Employees must work a minimum of 15 hours a week for at least six (6) weeks if not enrolled in school (summer or not enrolled) or a minimum of 10 hours a week when actively enrolled in classes.
  - 5. Employees must have weekly check-ins, as well as have an active project-based learning plan developed together with their supervisor.
- 4.4 Athletic Exemption: An employer is not required to pay City Minimum Wage to an employee to play baseball as part of an independent baseball league provided that the employee is compensated pursuant to a negotiated contract and appears on the roster of the baseball team.

#### **Rule 5. Covered Employees**

- 5.1 A covered employee is one who works within the geographic boundaries of the City for compensation.
- 5.2 Once a covered employee works for two or more hours within the City in any consecutive seven-day period, the employee must be paid at least the minimum wage for the time during that week worked within the City.
- 5.3 An employer may make a reasonable, good faith estimate of an employee's time spent working in the City consistent with the employer's usual payroll tracking practices. Documentation of this estimate may include, but is not limited to, dispatch logs, GPS tracking, employee logs, delivery addresses, estimated travel times, or historical averages.
- 5.4 A covered employee is covered regardless of immigration status.
- 5.5 Employees passing through the City without making any work-related stops are not covered by the Ordinance. Work-related stops do not include incidental stops (e.g. eating a meal, buying gas).
- 5.6 Employees who attend a convention, conference, training, etc. in the City but perform no

other work for their Employer for at least two hours in a week are not covered.

- 5.7 Independent contractors are not covered workers under this Ordinance. The Department will examine the entire relationship between the parties to classify a worker. No one factor is determinative and labeling a worker as an independent contractor is not a consideration for the Department. The Department will analyze the relationship using the following factors:
- a. Whether the worker files self-employment tax returns;
  - b. Whether the worker maintains a separate business and uses his or her own tools;
  - c. Whether the worker and the employer have a contract for performance of the services;
  - d. Whether the worker may realize a profit or suffer a loss under the contract to perform services;
  - e. Whether the worker incurs the primary expenses relating to the work performed.
  - f. Whether the worker controls the manner and means in which the work is performed.

#### **Rule 6. Business Size**

- 6.1 Employers must calculate their applicable business size. An employer's business size for the current calendar year is based upon the average number of employees per week during the previous calendar year.
- 6.2 Employers must count all employees whether employed full-time, part-time, jointly with another employer, or on temporary basis, including employees not located in Saint Paul.
- 6.3 All businesses must recalculate their business size annually effective January 1.
- 6.4 A new business shall be any business in business for less than one full calendar year. The Department will determine if a business is considered new by examining the totality of the circumstances, including the business structure, ownership and management, and type of work or clients. New businesses must initially calculate their size from the average number of employees per week during the first ninety (90) days after the first employee started working. For the 90-day period before the business calculation is in effect, new businesses must make a reasonable, good faith effort to estimate their projected number of employees and pay the applicable minimum wage.
- 6.5 For purposes of determining employer size under the Ordinance, integrated enterprises shall be counted as one employer. The Department will determine the existence of an integrated enterprise by assessing the degree of control exercised by one entity over the operation of another entity. The factors in this assessment include, but are not limited to:
- a. Degree of interrelation between the operations;
  - b. Degree to which the entities share common management;
  - c. Centralized control of labor relations;

d. Degree of common ownership or financial control over the entities.

If the Department determines an integrated enterprise exists, the integrated employer or individual employers deemed integrated employers will be subject to the business size commensurate with the size that equals the total number of employees in both entities.

- 6.6 Establishments operated pursuant to a franchise as defined in Minn. Stat. 80C.01 are classified based on the total number of employees at all franchise locations owned and operated by a single franchisee.
- a. Under 224.01, a franchise with more than two parties is considered an integrated entity for the purposes of calculating business size.
  - b. If an employer disagrees with this classification, the burden is on the employer to produce documentation to establish the degree of control is not great enough to warrant consideration as an integrated enterprise. The department will examine the factors for determining an integrated enterprise listed above.
- 6.7 Full-service restaurants within the City not operated pursuant to a franchise in Minn. Stat. § 80C.01 with fewer than 10 locations nationally are a unique employer for determining business size.
- 6.8 A person performing work for a contracting employer that was hired from a third-party staffing or temporary employment agency is an employee of the third-party staffing or temporary employment agency for purposes of determining who is responsible for paying minimum wage to the worker.

### **Rule 7. Enforcement**

- 7.1 Any person, employee, or third-party may report an alleged violation of the Ordinance to the Department in person, by phone, online, by U.S. Mail, or by email.
- 7.2 The Department's investigation will be conducted in an objective and impartial manner.
- 7.3 The Department may begin an investigation after receiving a complaint or initiate an investigation of its own initiative.
- a. 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. For ongoing, recurring, or repeat violations, the violations must be reported within two (2) years of the date of the most recent instance of the alleged violation.
  - b. A complaint must include a description of the facts alleging the violation(s), and should include, if possible, approximate date(s), names and contact information of person(s) with personal knowledge of the facts alleged, documents, and all available evidentiary material.

- c. The Director must notify an employer of an investigation via U.S. Mail. This notice must include:
  - 1. the allegations and pertinent facts;
  - 2. a request for a written position statement;
- d. The notice may include a request for records or other documents.
- e. Once the Department serves a Notice of Investigation, the employer must provide a written response, via US Mail, fax or email, to the Department within 30 days. The written response must specifically state the employer's position regarding the allegations set forth in the notice of investigation. If the employer admits to violating the ordinance, they must answer how they will remedy the violation and make the complainant whole. If the employer denies the allegations, the employer must specifically state how the employer complies with the ordinance.
- f. An employer's failure to fully respond to the Department's request for documents or a written position statement within thirty (30) days creates a rebuttable presumption of a violation of the Ordinance. An employer that fails to respond to a document request may not use any records not previously provided to the Department at any hearing held under this Ordinance.

7.4 During an investigation, the Department may interview the complainant, the respondent, and any persons who may provide information concerning the investigation. The Department may request employer respondent submit documents, records, files or any other materials the Department deems relevant to the investigation. The employer respondent shall provide such documents within 30 business days. Requests for employer records by the Department shall be made in accordance with Sec. 224.09 (b). It will be presumed the employer respondent has violated the ordinance if they do not provide records requested by the Department. At any time during the investigation the Department may use a variety of investigative tools or methods (e.g. requesting additional documents, calling a fact-finding conference). If the Department uses any additional tools or methods to conduct its investigation, parties to the investigation must participate.

7.5 The Department will not investigate an alleged violation if there is evidence to show the employee has a pending civil action arising from the same set of a facts or circumstances.

7.6 Employers must post notice of an investigation within seven (7) days of receiving notice of investigation from the Department. Notice to employees must be displayed in the same manner as the workplace poster described in §224.07(1) and §224.08(b) - (d).

### **Rule 8. Notice of Violation**

8.1 After the investigation, the Department will decide if cause exists to believe that an employer has failed to pay city minimum wage.



- 8.2 If the Department determines a violation did not occur, it will issue a notice of no violation to the complainant and respondent employer within 15 business days of conclusion of the investigation. The complainant may, within 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 days.
- 8.3 If the respondent employer contests all or part of the allegations or proposed restitution or sanction contained in the notice of violation, they shall respond in writing to HREEO within 15 business days from the issuance of notice of violation.
- 8.4 If respondent employer admits the allegations and does not contest the proposed restitution or remedy contained in the Notice of Violation, the respondent employer shall remit payment of wages, fines and corrections the Department requires within 15 business days from the issuance of notice of violation and provide the Department with verification of foregoing.

### **Rule 9. Appeals**

- 9.1 Failure to respond in writing within fifteen (15) working days is deemed an admission of the allegations and acceptance of the proposed restitution and fines.
- 9.2 There are two options for employers to appeal:
  - a. If the employer admits the allegations but wants to contest the proposed restitution or sanction, the employer may request a hearing before the Council on that issue.
  - b. If the employer denies the allegations and the rejects the restitution or sanction, the employer may request a hearing examiner.

### **9.3 Hearing Procedure**

- a. The procedure for requesting a hearing examiner will be governed by Minnesota Administrative Rules 1400.5300 or any subsequent rule governing administrative procedures.
- b. The date and time of the hearing pursuant to 224.07(f) will be determined by the assigned hearing examiner.
- c. Continuances for the hearing will be granted only with permission from the hearing examiner.
- d. The hearing under 224.07(f)(1) before the hearing examiner will be governed by Minnesota Administrative Rules Chapter 1400.
- e. The hearing examiner shall hear all evidence as may be presented on behalf of the city and the employer. Both parties shall 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 his/her discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.

- f. Following the hearing, the hearing examiner shall present to the Council written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.
- g. The hearing examiner shall receive and keep record of such proceedings, including testimony and exhibits, and shall 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.
- h. The City must prove that the employer failed to pay City Minimum Wage by a preponderance of the evidence.

#### 9.4 Council Review

- a. HREEO shall provide a copy of the resolution to complainant and respondent employer within 15 business days of receiving it from the Council.
- b. The Council will consider evidence only if it is in the record. The Council may accept, reject, or modify conclusions or recommendations of the hearing examiner.
- c. The Council will determine whether the employer failed to pay the city minimum wage. The Council will determine by resolution whether to adopt all or part of the conclusion and recommendations of the hearing examiner.
- d. The Council may impose 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 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.
- e. The relief, sanctions, or penalties recommended by the hearing examiner pursuant to 224.07(f) and imposed by the Council pursuant to 224.07(g), including imposition of costs under 224.07(f)(3), shall be provided by respondent employer within 15 business days from the day HREEO mails resolution to respondent employer.

#### Rule 10. Records

10.1 Payroll records must be maintained by the employer for three years and must contain the following information:

- a. Name of employee;
- b. Occupation or position;
- c. Age of employee, if under 18;
- d. Time of day employee began work and stopped working;
- e. Hours worked each day and hours worked each pay period;
- f. Type of payment (hourly rate, including standard and overtime, if applicable);
- g. Additions and deductions from each employee's wages for each pay period and an explanation of additions and deductions;
- h. Total wages each pay period;
- i. Date of payment of each pay period.

10.2 Employers must keep records for three years regarding independent contractors (e.g. contracts, project scope) and records relating to minimum wage adjustments for youth wage or youth training programs (e.g. program components, funding sources, and employee ages with corresponding pay rates).