

ORDINANCE

By Palmisano, Fletcher, and Cunningham

Amending Title 2 of the Minneapolis Code of Ordinances relating to Administration.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 18.115 contained in Chapter 18, Purchasing, be amended to read as follows:

18.115. - Contracts not to be awarded to persons or entities in default or with outstanding wage obligations. ~~Neither the city council nor any officers or employee of said city shall entertain any bid from or enter into any contract as defined in section 18.100, section 18.105 or any contract as defined in Chapter 423 with any person, firm, corporation or other entity that is in default to the city or any department thereof, on any contract or any bond or in any other way.~~

Neither the city council nor any officer or employee of the City shall enter into any contract with any person, firm, corporation or other entity that is in default to the City on any contract, or on any bond, or in any other way, or that is listed, at the time of the making of the contract, on the List of Outstanding Violations authorized by Chapter 40, Section 40.580(e) of this Code.

Section 2. That Chapter 40, Workplace Regulations, of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 40.460 to read as follows:

40.460. – Overtime, Breaks. (a) An employer shall pay all overtime compensation required by Minnesota Statutes § 177.25, and amendments thereto.

(b) An employer shall permit employees to take the rest breaks and meal breaks required by Minnesota Statutes § 177.253 through § 177.254 and amendments thereto. This subsection shall not require employers to pay employees during any required meal break. This section shall not prohibit employers and employees from establishing rest or meal breaks different from those provided in this subsection pursuant to a collective bargaining agreement.

(c) The Department shall have jurisdiction over the implementation, administration, and enforcement of this section pursuant to Section 40.410.

Section 3. That Chapter 40, Workplace Regulations, of the Minneapolis Code of Ordinances be amended by adding to thereto a new Article V, including Sections 40.500 through 40.650, to read as follows:

ARTICLE V. – WAGE THEFT PREVENTION

40.500. – Short Title. This Article V shall be known and may be cited as the Minneapolis Wage Theft Prevention Ordinance.

40.510. - Findings; Purpose. The City Council makes the following findings:

(a) As a home rule charter city, Minneapolis has broad authority through its police powers to enact regulations to further the public health, safety, and general welfare.

(b) Research shows that nearly half of hourly workers in the City are directly affected by the underpayment or nonpayment of wages. The most vulnerable low wage workers are the most likely to be affected by wage theft.

(c) Eliminating and preventing the theft of wages earned by persons working within the City promotes the public health and the general welfare by increasing economic security and dignity, increasing employees' ability to care for themselves and their families, and addressing the injustice employees experience when they do not receive the wages they have earned.

(d) Research shows that wage theft disproportionately affects low wage workers of color. Through its adopted goal of "One Minneapolis," the City has recognized that income inequality is one of the most pressing issues facing the City. The City can reduce these economic disparities by working to prevent and end wage theft.

(e) Eliminating wage theft also promotes business and economic development through the elimination of unfair economic competition by unscrupulous businesses that do not pay or underpay their employees.

(f) Eliminating wage theft also diminishes the burden imposed on the public when employees of unscrupulous businesses are forced to rely on public assistance due to underpayment or nonpayment of wages that have been earned.

(g) For all of these reasons, it is the policy of the City and the purpose of this Ordinance to eliminate and prevent wage theft.

40.520. - Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Minneapolis.

Department means the Minneapolis Department of Civil Rights.

Director means the Director of the Department of Civil Rights, or the Director's designee.

Employee means any individual employed by an employer, including temporary employees and part-time employees, who performs work within the geographic boundaries of the city for at least eighty (80) hours in a year for that employer. For purposes of this 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 participating in the Minnesota Statutes, Section 268A.15 extended employment program.

(2) Independent contractors.

(3) Casual babysitters, employed on an irregular or intermittent basis.

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, "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.

Gratuities means 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 is not the property of the employee.

Wages means all monetary compensation due to an employee by reason of employment including wages, salary, gratuities, earnings, or commissions, at the employee's rate or rates of pay, or the applicable rate or rates of pay required by law, whichever is greater, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value.

Piece rate means a price paid per unit of work.

40.530. – Wage Theft Prohibited. (a) An employer shall pay all wages owed to an employee by reason of employment, for work performed in the City of Minneapolis, on the regularly established payday identified in the notice required by Section 40.540.

(b) No employer shall directly or indirectly cause an employee to give a receipt for wages for a greater amount than actually paid to the employee for services rendered.

(c) No employer shall directly or indirectly demand or receive from any employee any rebate or refund from the wages owed to the employee.

(d) No employer shall make or attempt to make it appear that the wages paid to any employee were greater than the amount actually paid to the employee.

40.540. – Prehire Notice to Employee. (a) At the start of employment, an employer shall provide each employee a written notice containing the following information:

(1) The information required by Minnesota Statutes § 181.032(d);

(2) The date on which the employment is to begin;

(3) A notice of the employee's rights under the Sick and Safe Time Ordinance, Articles I through III of this Chapter, including the method by which the employee will accrue sick and safe time, the date upon which the employee is entitled to use accrued sick and safe time, and the date upon which the employer's year for the purpose of sick and safe time accrual begins and ends.

(4) The employer's policy regarding gratuities, if applicable to the position; and

(5) The overtime policy applicable to the employee's position, if any, including when overtime shall be paid and the applicable rate or rates of pay.

The written notice may provide this information by explicit reference to an employee handbook if employees are directed to the specific sections of the handbook in which such information is provided.

(b) 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.

(c) 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 changes must be signed by the employee before the changes go into effect. The employer must keep a signed copy of all notices of changes as well as the initial notices under subsection (a).

(d) The employer shall provide to the employee a copy of the notice required to be posted pursuant to Section 40.570(b). 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 shall be provided in that language if published by the Department.

(e) An employer who chooses to provide the notices required by subsections (a) and (c) in whole or in part by electronic means, including but not limited to by referencing an electronic employee handbook, must provide employees access to an employer-owned computer during an employee's regular working hours to review and print such notices. If, at the time of hire, an employee requests that the notice required by subsection (a) be provided in writing, rather than by electronic means, a written notice shall be provided before the start of the employment. An employer must provide the notices required by subsection (c) to an employee 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 the notices required by subsection (c) in written form. Once an employer has received notice from an employee that the employee would like to receive notices in written form, the employer must comply with that request on an ongoing basis.

(f) This prehire notice requirement is in addition to any additional pre-hire or recruitment notices that may be required by other applicable laws.

(g) An employer shall provide the prehire notice to all current employees as of the effective date of this Article if all of the information contained in the prehire notice has not already been provided to the employee.

40.550. – Required Statement of Earnings. (a) At the end of each pay period, the employer shall provide each employee an earnings statement, either in writing or by electronic means, covering that pay period. An employer who chooses to provide an earnings statement by electronic means must provide employee access to an employer-owned computer during an employee's regular working hours to review and print earnings statements.

(b) The earnings statement may be in any form determined by the employer but must include:

(1) The information required by Minnesota Statutes § 181.032(b), and amendments thereto; and

(2) The number of hours of Sick and Safe Time accrued and unused by the employee pursuant to Article III of this Chapter.

(c) An employer must provide earnings statements to an employee in writing, rather than by electronic means, if the employer has received at least twenty-four (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.

40.560. – Employer Record Keeping. (a) An employer shall create and maintain the following records demonstrating compliance with this article.

(1) The name, address, and position of each employee;

(2) The prehire notice(s) and changes thereto required by section 42.540;

(3) The required statements of earnings required by section 42.550, together with any additional information required to demonstrate how the total amount of gross pay earned by the employee was calculated. This information includes, but is not limited to, the hours worked each day and 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; and

(4) A list of personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies.

(b) Records required by this Article shall 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 shall be retained for at least three (3) years after the date upon which the statement was provided to the employee.

(c) An employer must allow an employee to inspect records required by this Article relating to the employee at a reasonable time and manner.

40.570. – Notice and Posting. (a) On an annual basis and by May 1st each year, the Department shall publish and make available to employers, in all languages spoken by more than five percent (5%) of the workforce in the city (as calculated by the Department), notices suitable for posting by employers in the workplace informing employees of their rights under this Article.

(b) Every employer shall post, in a conspicuous place at any workplace or job site in the City where any employee works, in a place where it can be readily observed and easily reviewed by employees, the notices required by subsection (a). Every employer shall post this notice in English, and in any language spoken by at least five percent (5%) of the employees at the workplace or job site, if published by the Department. If the employer's employees do not perform work at a workplace or job site in which the notice may be posted, this requirement may be satisfied by providing a physical or electronic copy of the notice to each employee.

40.580. – Enforcement. (a) *In general.* The implementation, administration, and enforcement of this Article shall be made pursuant to Chapter 40, Article II, which is incorporated herein by reference, except for subsections 40.120(a) and (d).

(b) *Report of Violations.* An employee or other person may report to the Department any suspected violation of this Article. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Article and within two (2) years prior to the filing of the report or, if the violation was willful and not the result of mistake or inadvertence, within three (3) years prior to the filing of the report.

(c) *Providing Notice of Determination of Violation.* When a report of violation is finally resolved either through settlement or through a Determination of Violation, which has become final and unappealable, the Department:

(1) If other employees are affected by the settlement or the final, unappealable Determination of Violation, shall provide a summary of the Determination of Violation to the employer. Upon being provided with the summary of the Determination of Violation, the employer shall post it for thirty (30) days in the same location(s) as the notices required by Section 40.570.

(2) May as appropriate provide the Determination of Violation to any department of the City with licensing authority over the employer.

(d) *Relief and administrative fines.* If an employer is found to have violated this Article, the Director shall order the employer to cease and desist from engaging in the violative practice and may order any appropriate relief, including but not limited to:

(1) Reinstatement;

(2) Compensatory damages to the employee(s) in the amount of wages owed by reason of employment, less any amount that the employer can establish was actually paid to the employee(s). If the records maintained by the employer do not provide sufficient information to determine the exact amount of wages owed to an employee, the Director may make a determination of the wages due based upon the available evidence;

(3) Liquidated Damages to the employee(s) in an amount equal to the compensatory damages, or two hundred and fifty dollars (\$250.00), whichever is greater. For a second violation of Section 40.530 by the employer within a three (3) year period, the liquidated damages may be increased to up to double the compensatory damages, or five hundred dollars (\$500.00), whichever is greater. For a third violation of Section 40.530 within three (3) years, the liquidated damages may be increased to up to triple the compensatory damages, or one thousand dollars (\$1,000.00), whichever is greater. In determining the

amount of the liquidated damages, the size of the employer and the gravity of the violation shall be considered;

(4) For a second or subsequent violation of Section 40.530 by the employer within a three (3) year period, payment to the Department of a civil fine of up to one thousand dollars (\$1,000.00) per violation per affected employee. For the purposes of this provision, an affected employee is an employee who was not paid all wages owed as required by section 40.530, regardless of whether the employee filed a report of violation. In determining the amount of the penalty, the size of the employer and the gravity of the violation shall be considered;

(5) Reimbursement of the Department for reasonable costs of investigation expended in enforcing this Article, unless the payment of costs would impose an extreme financial hardship on the employer, in which case the Director may order the payment of a percentage of costs expended which will not cause extreme financial hardship on the employer;

(6) Payment to the Department of a civil fine of up to one thousand dollars (\$1,000.00) for each failure to comply with section 40.560. For a second violation within three (3) years, the fine may be increased to up to one thousand five hundred dollars (\$1,500.00). For a third violation within three (3) years, the fine may be increased to up to two thousand dollars (\$2,000.00). In determining the amount of the fine, the size of the employer and the gravity of the violation shall be considered;

(7) Payment to the Department of a civil fine of up to two hundred dollars (\$200.00) for each failure to comply with section 40.540, section 40.550, or section 40.570. For a second violation of the same section within three (3) years, the fine may be increased to up to four hundred dollars (\$400.00). For a third violation of the same section within three (3) years, the fine may be increased to up to six hundred dollars (\$600.00). In determining the amount of the fine, the size of the employer and the gravity of the violation shall be considered;

(8) Payment to the Department of a civil fine of up to two thousand dollars (\$2,000.00) for failure to cooperate with the Department's investigation into a report of violation;

(9) Payment to the Department of a civil fine of not less than seven hundred dollars (\$700.00) nor more than three thousand dollars (\$3,000.00) for each violation of section 40.590. This fine shall be in addition to payment to the employee of compensatory damages for the retaliatory conduct in the amount of wages due but unpaid, up to one thousand dollars (\$1,000.00).

(e) *List of Outstanding Violations.* The Department may periodically publish a list of employers who have been determined to be in violation of this Article and which have unpaid relief due to employees or unpaid fines or costs due to the Department, along with the amounts of such unpaid relief or fines. No employer shall be placed on this list unless the determination is final and all rights of appeal have been exhausted, and at least 30 days have passed since such determination became final. Any employer who has fully paid all relief, fines and costs ordered to be paid, and has provided satisfactory proof of such payment to the Department, shall be removed from the list. An employer who appears on this list shall be deemed financially non-responsible and ineligible to be awarded new City contracts as otherwise authorized by this Code. An employer who has a business license issued by the City and has been placed on this list may be subject to adverse license action as otherwise authorized by this Code.

(f) If, during the pendency of a Department investigation, an employee who has reported a violation brings a private action in any court seeking unpaid wages based upon the same facts and allegations contained in the report to the Department, that employee's report of violation shall be deemed withdrawn and the investigation shall be closed. This section shall be interpreted narrowly to leave unaffected any rights not asserted in the private action and any rights of other employees.

40.590. – Retaliation. (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article, including, but not limited to, inquiring, disclosing, reporting, or testifying about any violation of this Article. An employer shall not take adverse employment action or discriminate against an employee because the employee has exercised rights under this Article.

(b) For purposes of this section, retaliation may be established when an employee shows that the exercise of rights under this Article was a motivating factor in the adverse employment action, even if other factors also motivated the adverse employment action.

(c) It shall be rebuttably presumed that retaliation has occurred if an employer within ninety (90) days of the employee's exercise of rights under this Article materially changes the terms or conditions of the employee's employment, including terminating, constructively discharging, or reducing the employee's wages or benefits, or making other changes in the employment that affect the employee's future career prospects. The employer may rebut this presumption by presenting clear and convincing evidence that the action was taken for a non-retaliatory purpose.

40.600. – Preemption. Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. No provision of this Article shall apply 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.

40.610. - No assumption of liability. In undertaking the adoption and enforcement of this Article, 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 does not create a legally enforceable right against the City.

40.620. – Severability. If any of the parts or provisions of this Article 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, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.

40.630. – Rule making. The Director may make appropriate rules to implement, administer and enforce this Article. Such rules shall be consistent with this Article and may be relied upon by employers and employees in determining their rights and responsibilities under this Article. Rules shall be published and made available to the public at least ninety (90) days prior to their effective date. Any revisions to such rules shall be published and made available to the public at least thirty (30) days prior to their effective date.

40.640. - Annual Report. Beginning in 2021, and each year thereafter, the Director shall by March 31st provide a written report to the appropriate committee of the city council regarding this Article. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this Article, including the number and nature of violations, specific violations, industries and occupations with high rates of violations, and the penalties assessed in the prior year. The report may also include recommendations for possible improvements to this Article.

40.650. – Effective Date. This Article shall be effective on January 1, 2020.