

DRAFT RULES



City of Saint Paul Rules for the Civil Wage Theft Ordinance

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1. Purpose of the Rules

- 1.1 These Rules govern the practices of the Department of Human Rights & Equal Employment Opportunity (“Department”) in administering the provisions of the Wage Theft Ordinance, Chapter 224A of Saint Paul Legislative Code (“Ordinance” or “Chapter”). These Rules have been promulgated pursuant to the authority listed at Saint Paul Administrative Code §11.01.
- 1.2 Nothing in these rules must be interpreted or enforced in a way that irreconcilably conflicts with the Federal or State Fair Labor Standards Acts.
- 1.3 *Severability.* These Rules are independent and severable. If any part of these Rules is found to violate any law or found to be invalid or in conflict with the Ordinance, such finding must be limited as narrowly as possible, and all other parts of these Rules must be considered valid and in effect.
- 1.4 *Liberal construction of rights, narrow construction of exemptions.* Under Saint Paul Legislative Code § 224A, the purpose of the Ordinance is to promote the general welfare of the people the City, and the Department has the authority to investigate possible wage theft violations. Accordingly, these Rules will be liberally construed, with any exceptions or exemptions narrowly construed.

2. Definitions and Clarifications

These Rules incorporate all definitions codified in the Ordinance and use the following defined terms:

- 2.1 “Code” means the Legislative Code of the City of Saint Paul, Part II of the Saint Paul Code of Ordinances. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02.](#))
- 2.2 “Council” means the City Council of the City of Saint Paul. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02.](#))
- 2.3 “Independent Contractor” has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02.](#))
- 2.4 “Joint and Several Liability” means that Employers, or any other person who is regularly engaged in business or commercial activity who has contracted with an Employer or Employee directly or indirectly, for labor from which such

person is the beneficiary, including general contractors, clients of staffing agencies, and labor brokers, will be jointly and severally liable for the payment of any penalty pursuant to a violation of Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §244A.05\(a\)](#).)

- 2.5 “Misclassification” means the practice by an Employer of not properly classifying workers as Employees. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02](#).)
- 2.6 “Ordinance” means Title XXIII Chapter 224A of the City of Saint Paul Legislative Code, “Civil Wage Theft.” (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02](#).)
- 2.7 “Perform” work means, including but not limited to, training time, fulfilling regularly scheduled work hours, opening and closing, and breaks less than 20 minutes. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02](#).)
- 2.8 “Start of Employment” means the day employment activities begin. For example, the “start of employment” can include, but is not limited to, the Employee’s first day of training or performing job duties. (See [Saint Paul, Minnesota, Municipal Ordinances §224A.02 and §224A.06](#).)
- 2.9 “Year” means a regular and consecutive 12-month period, either calendar or fiscal, as determined by an Employer and clearly communicated to each Employee of that Employer. (See [Saint Paul, Minnesota, Municipal Ordinance § 224A.02](#).)

3. Which Employees are Covered by the Wage Theft Ordinance?

General Rules about Covered Employees

- 3.1 The Ordinance covers all Employees, whether full-time, part-time, temporary, or some other designation, who perform work within the geographic boundaries of the City. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.02 and §224A.03](#).)
- 3.2 Unless specified in an agreement between an Employee and an Employer, time spent traveling to work before the Employee’s shift has started and traveling home after the Employee’s shift has ended are not covered by this Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03](#).)

- 3.3 Employees are not covered by the Ordinance for hours worked outside the geographic boundaries of the City. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03.](#))

Employees Working from Home

- 3.4 Employees working from home (or otherwise telecommuting) are covered by the Ordinance if the Employee is working within the geographic boundaries of the City. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03.](#))

Employees Working Periodically in Or Traveling Through Saint Paul

- 3.5 Employees who do not regularly work in the City are protected by the Ordinance if the Employee, over the course of one (1) week, performs at least two (2) hours of work within the geographic boundaries of the City. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03\(b\).](#))
- 3.6 Employees traveling through the City and only make incidental stops, such as changing a flat tire or stopping for gasoline, are not covered by the Ordinance in such situations. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03.](#))

On-Call Employees

- 3.7 An Employee 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, is working while on call and must at least be paid the applicable Saint Paul Minimum Wage rate. (See [Saint Paul, Minnesota, Municipal Ordinances §224A.03, §224, and Minn. R. §5200.0120, sub 2.](#))
- 3.8 An Employee not required to remain on or near the Employer's premises but is merely required to leave word at the Employee's home and/or with company officials where the Employee may be reached is not working while on call. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03 and Minn. R. §5200.0120, sub 2.](#))

Staffing Agencies

- 3.9 An Employee placed by a staffing agency is an Employee of the staffing agency for purposes of the Ordinance, unless there is an agreement providing otherwise. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.03.](#))

Independent Contractors

- 3.10 Independent Contractors are not covered by the Ordinance. (See Saint Paul, Minnesota, Municipal Ordinance §224A.02.)
- 3.11 Independent Contractors can sometimes be misclassified as not being Employees. It is the Employer's responsibility to categorize their workers correctly. There are tests to determine whether a worker is an Independent Contractor or an Employee.
- 3.12 An Employer can access the Independent Contractors test under the Federal Wages and the Fair Labor Standards Act at:
<https://www.dol.gov/agencies/whd/flsa/misclassification>
- 3.13 An Employer can access the Minnesota Nine-Factor test for Independent Contractors in the Construction Industry at:
<https://www.dli.mn.gov/business/independent-contractor/nine-factor-test-independent-contractors-construction-industry>

Salaried and Commission Based Employees

- 3.14 For Employees paid on commission or with tips, the base rate of pay is the same rate that the Employee receives per hour of work. In no case shall the Employee's base rate be less than that provided under Saint Paul's Minimum Wage law. (See Saint Paul, Minnesota, Municipal Ordinance §224.)
- 3.15 To calculate the base rate for salaried or 100% commission paid Employees, use the formula below:
1. Take the Employee's total annual salary.
 - a. For Employees who earns 100% commission or are salaried the total annual salary is the total number of wages paid out to the Employee over a regular and consecutive 12-month period.
 - b. For Employees who are salaried or earn 100% commission, add together all the monthly earned wages since the Start of Employment. Divide the total wages earned by the number of months worked to get an average monthly wage. Multiply that average monthly wage by 12 to get the annual salary.
 2. Divide the annual salary amount by 52 weeks worked, or expected to work, per Year to determine the Employee's weekly wage amount.

3. Divide the weekly wage amount by the number of hours in the Employee's normal or average work week to determine the Employee's hourly base rate.

Example: John earns \$80,000 for an annual salary and is not paid by the hour. On average, John works 40 hours per week. His weekly salary is \$1,538.46 ($\$80,000 / 52 = \$1,538.46$). If John's normal work week is 40 hours, John's standard hourly salary is \$38.46 ($\$1,538.46 / 40 = \38.46). John's standard hourly rate would be \$38.46.

- 3.16 For Employees whose rate of pay fluctuates within a single job title depending on what duties they are performing for the Employer, the base rate is the rate received per hour of work for the Employee. In no case shall the Employee's base rate be less than that provided under Chapter 224 of the Code of Saint Paul's Minimum Wage.

Piecework Compensation

- 3.17 In no case shall the Employee's hourly rate be less than that provided under Saint Paul's Minimum Wage law. (See [Saint Paul, Minnesota, Municipal Ordinance §224.](#))
- 3.18 For Employees who are paid on a piecework basis, the Employer calculates the Employee's rate of pay by doing the following:
 1. Add together the Employee's total earnings for the most recent workweek. This is the Employee's total weekly earnings.
 2. Divide the total weekly earnings by the number of hours worked during the most recent workweek. This is the Employee's hourly rate.

4. Wage Theft Prohibited

- 4.1 An Employer must pay all wages earned by an Employee by reason of employment, for work performed in the City of Saint Paul by a date required by law. A regular payday must be identified in an Employee wage notice. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.04.](#))

Example: Jo works 40 hours a week for Sunbeam Hardware. At the end of the pay period, they receive their paycheck and go directly to the bank to cash their check. Jo is informed a couple of days later that they have insufficient funds in their account and need to reimburse the bank due to the check not being able to be processed. Jo discusses the situation with the Employer who promises to pay them when they have their finances in line but the Employer must pay all wages earned at the date they both agreed to as the pay day.

Example: Maria is hired by Joy Coffee House and upon the start of employment, they are given an Employee wage notice that outlines their hourly rate of pay and identifies a regular payday.

Example: Ahmad is an hourly Employee who works for Mustard Industries, Inc and often works over-time hours each week. The Employer chooses to pay the Employee only 40 hours a week and decides to withhold over-time wages. Ahmad talks to human resources, and they resolve the issue by issuing back wages to Ahmad. Ahmad is owed for all hours worked and to be paid wages by the payday that is agreed upon in the Employee wage notice.

Example: June received a W-2 form from Sierra's Pet Store two (2) years after her resignation with the Employer for wages that was paid to June and had taxes deducted. The W-2 form shows wages that were paid to June, but she had not received any wages in her bank account.

- 4.2 If the Employer has overpaid an Employee, they should provide notice prior to withholding the overpayment. ([See Saint Paul, Minnesota, Municipal Ordinance §224A.04 \(d\).](#))

Example: Gerbert works for Tou's Market and receives their wages every two (2) weeks. Upon receiving their pay stub, the Employee noticed that they were getting overpaid by the payroll company. The Employer must provide advanced notice to the Gerbert prior to withholding payment from them.

5. Joint and Several Liability

General Rules about Joint and Several Liability

- 5.1 The Department must apply damages to Employers with joint and several liability when doing so would serve the interests of fairness and justice by fulfilling the Ordinance's purpose of eliminating and preventing wage theft. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.05.](#))

Collections

- 5.2 The Department must first attempt to collect any unpaid wages, interest, damages, and other penalties from the Employer alleged to have committed the violation before attempting to collect Employers with joint and several liability. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.05\(a\).](#))
- 5.3 Only after attempting to collect unpaid penalties from the Employer alleged to have committed the violation will the Department attempt to collect unpaid penalties from joint and severally liable Employers, moving sequentially. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.05\(b\).](#))

Example: General Contractor A contracts with Subcontractor B to perform certain work. Subcontractor B directly employs an Employee to perform that work. If the Department finds that the Employee suffered wage theft, then the Department will first attempt to collect from Subcontractor B and then attempt to collect from General Contractor A.

Notice to Joint and Severally Liable Parties

- 5.4 The Department must make a good-faith effort to identify all potentially joint and severally liable Employers, during an investigation. Where the Department identifies a potentially joint and severally liable Employers, the Department must provide a Notice of Investigation via U.S. Mail to that potentially liable Employer. The potentially joint and severally liable Employer has the same rights, responsibilities, and timelines to respond to a Notice of Investigation as the Employer that directly hired the Employee. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.05.](#))

6. Employee Wage Notice

- 6.1 An Employer must provide each Employee with an Employee Wage Notice by the start of their employment. This notice must include all the information required in this Chapter. Additionally, an Employer may choose to provide an Employee the Wage Notice to an Employee prior to the start of employment. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.06.](#))

7. Required Statement of Earnings

- 7.1 An Employer may decide whether to provide each Employee the required statement of earnings covering a pay period in writing or by electronic means. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.07\(a\).](#))
- 7.2 Where an Employee elects to receive the required statement of earnings in writing, the Employer must comply with that request, but the Employer may choose how best to comply with the request in the normal course of business, such as sending the statement of earnings via U.S. Mail, handing out the statement of earnings to the Employee on a certain day and time, etc. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.07.](#))

8. Employer Recordkeeping

Access to Records

- 8.1 Employers must provide the Department access to records to investigate potential violations and to monitor compliance with the requirements of the Chapter. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.2 Employer records must, at a minimum, maintain all the information required in this Chapter for a three (3) year period for all Employees and provide to the Department upon request. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.3 Where possible, Excel documents are required. PDFs will not be accepted without good cause. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.4 The Department will not accept incomplete, disorganized, and/or illegible records. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))

Failure to Provide Access to or Maintain Records

- 8.5 Once the Department notifies an Employer that an investigation has commenced, the Employer may not destroy any records until the Employer is notified by the Department that the investigation has concluded. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.6 An Employer's failure to provide a position statement or to provide a full response to a request for records, or any other reasonable request issued by the Department pursuant to an investigation, within 30 days of such request creates a rebuttable presumption of a violation of this Chapter. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.7 When an Employer does not provide or maintain adequate records as mandated by the Ordinance, and where the Department orders backpay, the Department may make determinations of wages based on available evidence. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))
- 8.8 Available evidence for the Department making a determination of wages in such situations includes but is not limited to contracts, documentation and testimony provided by Employees, documentation provided by the Employer, public documentation posted by the Employer, documentation provided by third-parties, wage estimates by the U.S. Bureau of Labor Statistics and other federal or state agencies, etc. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.08.](#))

9. Notice and Posting

- 9.1 The Department has available a standard Workplace Notice Poster for Employers in five (5) different languages. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.09\(a\).](#))
- 9.2 An Employer must hang the standard Workplace Notice Poster in a noticeable place, such as in a breakroom, by a punch clock, or at some common work meeting place where it can be seen by Employees. Employers may also put an electronic copy in an internet or electronic platform to satisfy written posting requirements. The Workplace Notice Poster must be in English, and the primary language of Employees as identified by the Employees. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.09\(b\).](#))

- 9.3 An Employer that provides an Employee handbook to its Employees must include notice of Employee rights under the Ordinance in the handbook. Employers can satisfy this requirement, for example, by including the Department-made notices in a handbook. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.09\(d\)](#).)

10. Employer Succession

- 10.1 The original Employer remains liable for all wages owed to Employees up to the time of the transfer of the business to the successor Employer. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.10](#).)
- 10.2 A successor Employer must provide Employees with an Employee Wage notice at the time of sale or acquisition, or as soon as practicable, which must comply with the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.10](#).)

11. Implementation

- 11.1 The authority of the Director and Department to implement, administer, and enforce this Chapter is clearly established and outlined in Saint Paul Legislative Code § 224A. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.11](#).)
- 11.2 The Department will develop and implement culturally specific outreach to educate Employee and Employers about the rights and obligations under this Chapter. Upon the request of Employers or Employees and at agreed upon times by the Department, the Department will provide presentations to educate about the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.11](#).)

12. Investigation and Enforcement

Time Limitations

- 12.1 Any person alleging a violation of the Ordinance has the right to file a complaint with the Department within two (2) years of the alleged violation. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(a\)](#).)

Confidentiality of Information

- 12.2 Per [City of Saint Paul Administrative Code § 11.03\(d\)](#) the Department must maintain the confidentiality of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The Department must, to the extent practicable, notify such Complainant that the Department will be disclosing their identity prior to such disclosure.

Investigation Process

- 12.3 The Department may investigate and resolve complaints.
- 12.4 The Department begins an investigation when a complaint is received by sending a Notice of Investigation to the Employer that sets forth the allegations and the pertinent facts. Pertinent facts may include, but are not limited to, the allegations in the complaint. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(b\)\(1\)](#).)
- 12.5 The Department may amend the initial Notice of Investigation and resend to the Employer at any point in the investigation. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12](#).)
- 12.6 The Employer is permitted to make additional copies of the Notice of Investigation to post in more than one (1) location or post in an online system that Employees can access. The Notice of Investigation must remain posted until the case is closed, and the Department confirms the Employer is in compliance. The Employer must send a photo of where the notice has been posted within seven (7) days to the Department. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(b\)\(1\)](#).)
- 12.7 The Employer must provide a written response, via U.S. Mail, fax or e-mail specifying their position. If the Employer admits to violating the Ordinance, they must answer how they will remedy the violation. If the Employer denies the allegations, they must specifically state how the Employer is in compliance with the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(b\)\(2\)](#).)
- 12.8 If the Employer fails to provide the requested information, the Department will make its decision without the Employer's input. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(b\)](#).)

- 12.9 The Employer may request additional time to submit the written response to the Notice of Investigation or any other request made by the Department. Such a request should include the amount of time requested and the reason that the Employer cannot respond within the original time allowed. The Department's grant or denial of this request is not appealable. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(b).)
- 12.10 The Employer and the Department may enter an informal mediation process at any time during the investigation, known as the Pre-Determination Agreement Settlement Process. This conversation is an opportunity for the parties to negotiate a settlement and resolve the matter. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(b).)
- 12.11 If a Pre-Determination Settlement Agreement is not reached, the Department will continue the investigation and issue a Determination of Violation or Determination of No Violation based on a preponderance of the evidence. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(b) and §224A.12(c).)

Determination of Violation or No Violation

- 12.12 The Determination will be sent to the complainant who filed the suspected violation report and the Employer via either U.S. Mail, fax, or e-mail. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(c) and §224A.12(e).)
- 12.13 If the Department issues a Determination of No Violation, the complainant may ask for a reconsideration or bring a civil action in district court. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(c) and §224A.12(d).)
- 12.14 If the Employer denies the allegation, they have the right to present evidence to a Hearing Examiner. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(e).)
- 12.15 The Hearing Examiner will present the written findings to the City Council, which will uphold or overturn the finding based on the evidence in the record. There is no opportunity for the Employer to submit new evidence at this point. (See Saint Paul, Minnesota, Municipal Ordinance §224A.12(f).)

13. Remedies and Relief

- 13.1 The Employer and the Employee may, with the approval of the Department, agree to a resolution or remedy, such as financial compensation. Alternatives are not exclusive of other remedies under the Ordinance if additional violations occurred. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.13\(a\)](#).)
- 13.2 The Department may order public interest terms as additional remedies, including but not limited to policy corrections, Employee training, and compliance reporting. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.13\(a\)](#).)
- 13.3 Reasonable interest begins to accrue from the date of a Determination of Violation until all ordered financial compensation is satisfied. (See [Saint Paul, Minnesota, Municipal Ordinance § 224A.13\(a\)\(2\)](#).)
- 13.4 The Department may order the debarment of any Employer found to be in violation of the Ordinance 2 or more times in a 3-year period. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.13\(a\)\(4\)](#).)
- 13.5 The Department may publish the List of Outstanding Violations on the City of Saint Paul's website. Employers will be placed on this list until all remedies and relief have been paid in full and verified with the Department. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.13\(a\)\(5\)](#).)

14. Employer Retaliation Against Employees is Prohibited

- 14.1 A complaint or any other communication by a person triggers the protections of this section regardless, if verbal or written and if a complaint makes reference to the Chapter or not. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.14](#).)
- 14.2 Employers may not retaliate against any Employee for exercising any rights under the Ordinance. Employers also may not interfere with Employee rights under the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.14](#).)
- 14.3 Examples of retaliation include, but are not limited to, the following: termination, suspension, revocation of benefits, demotion, transfer to a different location, job reassignment, pay decrease, loss of hours, etc.

- 14.4 Retaliation may also include threats to report a person to immigration authorities. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.14.](#))

15. Private Right of Action

- 15.1 A person injured by a violation of the Ordinance may bring a civil action in district court to recover any and all damages recoverable at law, together with costs and disbursements, including but not limited to reasonable attorney's fees, backpay and reinstatement to the person's previous position, wages, benefits, hours, and other conditions of employment; and may receive injunctive and other equitable relief as determined by the court. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.14\(c\).](#))
- 15.2 Employees may file a lawsuit in district court if they allege that their Employer interfered with their rights as outline in the Ordinance. An Employee or other person who has reported a violation of this Chapter may:
- 15.2.1 Bring a civil action in district court within 45 days after receipt of a notice of Determination of No Violation of this Chapter. Notice is presumed to be five (5) days from the date of service by U.S. Mail of the written notice. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(d\).](#))
- 15.2.2 Bring a civil action in district court within 45 days upon notice that 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 U.S. Mail of the written notice. (See [Saint Paul, Minnesota, Municipal Ordinance §224A.12\(d\).](#))