

# Changes to Minnesota Laws Affecting Construction

Effective August 1, 2019

## **RETAINAGE (MINN. STAT. §§ 15.72 AND 337.10- EFFECTIVE 8/1/2019)**

In 2019, the legislature incorporated changes to retainage requirements for both public and private projects in Minnesota. For all projects, the owner/public entity must now release retainage to downstream contractors/suppliers within 60 calendar days after the date of project substantial completion and contractors/suppliers in turn must pay their downstream subcontractors/suppliers retainage within 10 calendar days of receiving retainage payment from the owner/public entity. Note, however, that nothing in the statute requires payment for a portion of a contract that is not complete or for an invoice that has not been submitted.

After substantial completion, owners/public entities can hold back funds for punch list work during the 60 day period, but that holdback can be no more than 250 percent of the cost to complete/correct work. This holdback must be accompanied by a written statement detailing the amount and basis for withholding. Retainage cannot be withheld strictly for warranty work.

Additionally, note that owners and public entities are also entitled to hold back 1 percent of the total contract value or \$500, whichever is greater, to encourage downstream contractors/suppliers to complete "final paperwork," which is defined by the statute as any document necessary to fulfill a contractual obligation (such as payroll documents or withholding exemption certificates). Once final paperwork is submitted, this amount must be paid to downstream entities within 60 days.

The 2016 5 percent cap on retainage remains the law in Minnesota. However, the new law makes it clear that if there is a dispute between the owner/developer and a downstream party (that justifies withholding retainage from that party), the owner/developer must pay retainage to any other downstream parties whose work is not involved in the dispute and must provide a written explanation to the affected party regarding the dispute and the basis for withholding retainage.

## **WAGE THEFT (MINN. STAT §§ 16C.285 AND 175 ET. SEQ.- PENALTY PROVISIONS EFFECTIVE 8/1/2019)**

Minnesota's Legislature passed a wage theft law in 2019 that was designed to be the "strongest in the country." The legislature has established new rules that require employers to provide employees with notice of expected wages, keep specific records of employee wages, comply with Department of Labor and Industry (DLI) investigations and to provide employees with documentation of wages actually earned.

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## Notice to Employees

The new wage theft law requires an employer to give written notice, in English, to employees at the start of employment, which includes the following information:

1. Rate and manner (by hour/shift/day/salary/commission) of pay
2. Applicable allowances for meals/lodging
3. Paid vacation and sick time information, including accruals and terms of use
4. The employee's employment status and whether the employee is exempt from minimum wage and overtime and on what basis
5. A list of deductions that may be made from an employee's pay
6. The number of days in each pay period, the scheduled pay day, and the date of first payment
7. The legal and operating names of the employer
8. The physical address of the employer's principal place of business (and mailing address, if different)
9. The telephone number of the employer

If the employer intends to change any of the items/information, it must first give written notice, in English, to the employee before putting the change(s) into effect.

Further, an employer must keep a signed copy of the written notice provided to each employee. If an employee requests the notice in a different language, an employer must make the notice available to that employee in the requested language.

## Earnings Statements

Under the new wage theft provisions, an employer must now also make sure that at the end of every pay period employee pay stubs/earnings statements include the following information:

1. Name of the employee
2. Rate and manner (by hour/shift/day/salary/commission) of pay
3. Applicable allowances for meals/lodging
4. Total number of hours worked (unless exempt)
5. Total amount of gross pay during period
6. List of deductions
7. Net pay after deductions
8. Date pay period ends
9. The legal and operating names of the employer

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10. The physical address of the employer's principal place of business (and mailing address, if different)
11. The telephone number of the employer

## Frequency of Pay

The new Minnesota provisions also require an employer to pay wages, salary, earnings and gratuities to employees at least once every 31 calendar days and to pay all commissions earned at least once every three months. Failure to do so can result in the DLI issuing a demand on the employee's behalf for those payments and imposing a penalty on the employer in the amount of the employee's daily earnings at the applicable rate.

## Required Recordkeeping

The 2019 provisions of the wage theft law change requirements regarding recordkeeping. Specifically, an employer must now keep the following records for each employee:

1. The name, address and occupation 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 by the employee – including, for all employees paid at piece rate, the number of pieces completed at each piece rate
4. A list of the personnel policies provided to the employee, including the date the employer gave the policies to the employee and a brief description of the policies
5. A copy of the notice provided to each employee as required by section 181.032, paragraph (d), including any written changes to the notice under section 181.032, paragraph (f). See immediately below for more detail on this notice requirement.

## Enforcement

The 2019 wage theft law authorizes the Office of the Minnesota Attorney General (in addition to the DLI) to investigate and enforce the terms of the statute. Specifically, failure to pay employees "all wages, salary, gratuities, earnings or commissions at the employee's rate or rates of pay or at the rate or rates required by law. This includes any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater" constitutes "wage theft." Wage theft can lead to up to 5 to 20 years imprisonment for the responsible party and fines from \$10,000 to \$100,000 depending on the amount of wages included in the "theft."

An employer can also be subject to a misdemeanor charge if it hinders or delays an investigation by the Office of the Attorney General and/or the DLI, refuses to allow access to the workplace, fails to keep or

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preserve records, or fails to post a summary of all applicable labor rules under Minnesota's Fair Labor Standards Act (Minn. Stat §§ 177.21 to 177.44) as required by Minn. Stat. § 177.31.

Under the 2019 wage theft law, an employer is prohibited from retaliating in any way against an employee who seeks remedies or files complaints under this statute. Any employer who retaliates is subject to a fine of \$700-\$3,000 per violation.

Additionally, a contractor's violation of the revised 2019 Minnesota wage theft law can lead to a loss of "responsible contractor" status for a contractor, which can prevent a contractor from being the "lowest responsible bidder" in a procurement process for a competitively bid project.

See a [summary of these changes](#) put together by DLI. Please let us know if you would like any assistance regarding new notice and record-keeping requirements. We can help with forms or other documents as needed.

### **HANDS-FREE CELL PHONES REQUIRED (MINN. STAT § 169.011, SUBD. 94-EFFECTIVE 8/1/2019)**

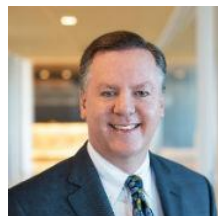
The 2019 Minnesota Legislature passed a ban on cell-phone use while driving. The ban covers all "wireless communication devices" and prohibits their use while a vehicle is "in motion or a part of traffic." There is an exception for voice-activated or hands-free mode (and for emergency use), but not for use of GPS or directional applications while a vehicle is moving. A \$275 fine is assessed for any citations issued under this section after a person's first violation.

### **CONTACT US**

For more information on the recent changes, please contact one of the attorneys listed below or the Stinson LLP contact with whom you regularly work.



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