

..Title

Amending Title XXIII of the Saint Paul Legislative Code to add Chapter 224A titled Wage Theft

..Body

SECTION 1

WHEREAS, Chapter 224A of the City's Legislative Code is the City's Civil Wage Theft Ordinance; and

WHEREAS, the purpose of this Civil Wage Theft Ordinance is to eliminate and prevent the theft of wages earned by persons working within the geographic boundaries of the City of Saint Paul; and

WHEREAS, the City desires to promote the general welfare of workers by increasing economic security and dignity, and addressing the economic and social injustices experienced by Employees when they do not receive the wages they have earned; and

WHEREAS, wage theft is one of the most prevalent forms of theft in America and often goes unrecognized; and

WHEREAS, eliminating and preventing the theft of wages due to underpayment or nonpayment of wages that have been earned by Employees working within the city increases employees' ability to care for themselves and their families; and

WHEREAS, the City recognizes that wage theft has a domino effect on the health of communities, and workers whose wages are stolen cannot participate fully in the economy; and

WHEREAS, the City recognizes that victims of wage theft are often members of historically marginalized communities; and

WHEREAS, low wage workers are most affected by wage theft, and it is in the City's ethos to empower such workers; and

WHEREAS, the City wishes to promote business and economic development through the elimination of unfair economic competition by businesses that do not pay or underpay their Employees; and

WHEREAS, the City wishes to safeguard the public welfare, health, safety, and prosperity of the people in the City of Saint Paul; now, therefore, be it

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

SECTION 2

Title XXIII – Public Health, Safety, and Welfare is hereby amended to add Chapter 224A, titled Wage Theft as follows:

Sec. 224A.01 Declaration of policy.

The Council recognizes that research shows that the most vulnerable low wage workers are those most likely to be affected by wage theft. The City Council recognizes that its objective of preventing wage theft, reducing economic disparities, and promoting economic development, in a manner that is fair and reasonable to both Employees and Employers, is accomplished by enacting the following regulations which are intended to achieve the purposes of this chapter.

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 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, "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 Minn. Stat., § 268A.15 extended employment program.
- (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, "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 bona

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
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- (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.

Sec. 224A.03. Employment in Saint Paul.

- (a) Subject to paragraph (b) below, Employees are covered by this chapter for all time worked within the geographic boundaries of the City of Saint Paul.
- (b) An Employee who is typically based outside the geographic boundaries of the City and performs work in the City on an occasional basis is covered by this chapter for hours worked within the geographic boundaries of the City 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 for an Employer.

Sec. 224A.04 Wage theft prohibited.

- (a) An Employer must pay all wages earned by an Employee by reason of employment, for work performed in the City of Saint Paul. It is a violation of this chapter for any Employer to not pay all wages earned by an Employee by reason of employment, for work performed in the City.
- (b) It is a violation of this chapter for an Employer 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, to fail to ensure full payment of all wages lawfully due to an Employee by the date required by a lawful agreement or by law.
- (1) Minn. Stat. §§ 181.10 and § 181.101 and any amendments thereto along with any other applicable Minnesota statutes controls how an Employer pays wages to Employees on a regular payday designated in advance.
- (2) The regular payday designated in advance must be identified in the employee wage notice required under Section 224A.06.
- (c) No Employer may 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.
- (d) No Employer may directly or indirectly demand or receive from any Employee any rebate or refund from the wages owed to the Employee, when doing so would deprive an Employee of wages that have been earned. This section is not intended to prevent Employers from recovering overpayments of wages, provided that the Employee must be given written notice before the overpayment is recovered.
- (e) No Employer may make or attempt to make it appear that the wages paid to any Employee were greater than the amount actually paid to the Employee.

Sec. 224A.05 Joint and Several Liability; Indemnification.

- (a) *Joint and Several Liability.* An Employer, 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,
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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 this chapter.

(1) The Department must attempt to collect from the Employer or person alleged to have committed the violation before attempting to collect from any other party who benefitted from the work, other than a client. Once the Department has attempted to collect from every other party the Department may attempt to collect from a client.

(b) *Indemnification.* An Employer or other person may seek indemnification or recovery from third parties for penalties they incur for failure to comply with the requirements of this chapter. However, any such rights may in no way excuse an Employer or other person from taking whatever steps are necessary to ensure compliance with this chapter by all persons and entities engaging in work on behalf of or for their benefit, nor may they serve as a basis for a person to avoid payment of any monetary penalties or occurrence of other consequences for violation(s) of this chapter.

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 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.

Sec. 224A.07 Required statement of earnings.

- (a) At the end of each pay period, the Employer must 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 an Employee access to an Employer-owned computer during an Employee's regular working hours to review and print earnings statements and must make statements available for review or printing for a period of three (3) years.
- (b) The earnings statement may be in any form determined by the Employer but must include the information required by Minn. Stat. § 181.032(b), and any amendments thereto, including:
- (1) the name of the Employee;
 - (2) the rate or rates of pay and basis thereof, including whether the Employee is paid by hour, shift, day, week, salary, piece, commission, or other method;
 - (3) allowances, if any, claimed pursuant to permitted meals and lodging;
 - (4) the total number of hours worked by the Employee unless exempt;
 - (5) the total amount of gross pay earned by the Employee during that period;
 - (6) a list of deductions made from the Employee's pay;
 - (7) any amount deducted by the Employer;
 - (8) the net amount of pay after all deductions are made;
 - (9) the date on which the pay period ends;
 - (10) the legal name of the Employer and the operating name of the Employer if different from the legal name;
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(11) the physical address of the Employer's main office or principal place of business, and a mailing address if different; and
(12) the telephone number of the Employer.

(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) hour 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.

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) An Employer must allow an Employee to inspect records required by this chapter relating to the Employee at a reasonable time and manner

(d) Employers must allow the Department access to such records, with appropriate notice, in order to investigate potential violations and to monitor compliance with the requirements of this chapter. Social security numbers and Employees' personal addresses must not become a matter of public record.

(1) In addition to the records listed in paragraph (a) of this section, Employers must allow the Department access to any other information, documents, or evidence the Department finds necessary and reasonably related to investigation of an alleged violation of this chapter.

(e) When an issue arises as to an Employee's wages under this chapter, if the Employer does not maintain or retain adequate records or does not allow the Department reasonable access to such records, it will be presumed that the Employer has violated this chapter, absent clear and convincing evidence otherwise.

- (1) 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.
- (f) 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.

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) Employers must give notice on an annual basis to Employees of their rights under this chapter, including that wage theft is prohibited, that an Employee has the right to report a violation, and 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.

Sec. 224A.10 Employer succession.

- (a) When a different Employer succeeds or takes the place of an existing Employer, the original Employer must ensure that all wages have been paid at the time of transfer of the business. All Employees of the original Employer who remain employed by the successor Employer are entitled to all wages earned when employed by the original Employer.
- (b) If there is an open and ongoing investigation between the Department and the original Employer at the time of transfer of the business, the original Employer must provide notice of the transfer to the Department and notice of the open investigation to the successor business at least 30 days prior to the transfer.
- (c) The successor Employer will be required to meet all requirements under this chapter at the time of transfer of the business.

Sec. 224A.11 Implementation.

- (a) The Director is authorized to implement, administer, and enforce this chapter. The Department has the authority to investigate possible violations of this chapter whenever it has cause to believe that a violation of this chapter has occurred, either on the basis of a
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report of a suspected violation or on the basis of any other credible information including violations found during the course of an investigation.

- (b) The Department is authorized to coordinate implementation and enforcement of this chapter and must promulgate appropriate guidelines and regulations for such purposes. Any guidelines or rules promulgated by the Department have the force and effect of law and may be relied on by Employers, Employees, and other persons to determine their rights and responsibilities under this chapter. Such guidelines or rules must:
- (1) Be consistent with this chapter;
 - (2) Establish procedures for fair, efficient, and cost-effective implementation and enforcement of this chapter, including rules governing procedures for administrative hearings and appeals; and
 - (3) Establish procedures for informing Employers of their duties and Employees of their rights under this chapter and monitoring Employer compliance.
- (c) The Director must publish, maintain, and make available to the public any such initial rules at least ninety (90) days prior to their effective date. Any revisions to published rules must be published, maintained, and made available to the public at least thirty (30) days prior to their effective date.
- (d) The Director must develop and implement a multilingual and culturally specific outreach program to educate Employees and Employers about their rights and obligations under this chapter. This outreach program must include media, trainings, and materials accessible to the diversity of Employees and Employers in the City.

Sec. 224A.12 Investigation and Enforcement.

- (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 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
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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, or any other reasonable request issued by the Department pursuant to an investigation, within thirty (30) days of such request creates a rebuttable presumption of a violation of this chapter. An Employer that fails to respond to a request for records may not use such records or any records not provided to the Department at any hearing held under this chapter.

(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 issue a notice of violation for failure to pay wages to the Employer. The notice will 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 hear all evidence as may be presented on behalf of the City and the Employer. Both parties will 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 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 receive and keep 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.
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- (1) The city council will consider 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 determine 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 as a complete defense to any petition or claim regarding the Director's determination.

Sec.224A.13 Remedies and relief; list of outstanding violations.

- (a) If an Employer is found to have violated this chapter, the Director may 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) Payment of wages unlawfully withheld, for any violation of this chapter and restitution for any out-of-pocket expenses resulting from violation of this chapter. The Department may include reasonable interest in any damages calculation.
- (a) 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.
- (3) Payment of liquidated damages to Employee(s) in the amount of wages unlawfully withheld multiplied by two (2), or five hundred dollars (\$500.00), whichever amount is greater.
- (a) Liquidated damages may be awarded to an Employee as provided in this section in compensation for payment of wages more than seventy-two (72) hours after the regularly scheduled payday even if all wages earned by the Employee are paid before the Director makes a finding that the Employer has violated this chapter.
- (4) *Debarment.* An Employer found to be in violation of this chapter two (2) or more times in a three (3) year period may be subject to debarment.
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(a) An Employer that is the subject of a final order for which all appeal rights have been exhausted will not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an Employer is the subject of a final order two (2) times or more within a three (3) year period, the contractor or subcontractor may not be allowed to bid on any City contract for three (3) years. This subsection is to be construed to provide grounds for debarment separate from, and in addition to, those contained in Saint Paul Legislative Code Section 185 and will not be governed by that chapter if nothing in this subsection will be construed to limit the application.

(b) A debarment under this section will be in effect against any successor corporation or business entity that has one (1) or more of the same principals or officers as the Employer against whom the debarment was imposed; and the successor corporation or business is engaged in the same or equivalent trade or activity.

(5) *List of Outstanding Violations.* The Department may periodically publish a list of Employers who have been determined to be in violation of this chapter 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 may be placed on this list unless the determination is final and all rights of appeal have been exhausted, and at least thirty (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, must be removed from the list.

Sec. 224A.14 Retaliation.

(a) It is unlawful, and a violation of this chapter for an Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right protected under this chapter.

(1) Such rights include but are not limited to the right to earn wages pursuant to this chapter; the right to make inquiries about the rights protected under this chapter; the right to inform others about their rights; the right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written complaint with the Department or bring a civil action for an alleged violation; the right to cooperate with the Department in its investigations; the right to testify in a proceeding under or related to this; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this chapter.

(2) No Employer or any other person may communicate to a person exercising rights protected under this section, directly or indirectly, the willingness to inform a government Employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Employee or a family member of the Employee to a federal, state, or local agency because the Employee has exercised a right under this chapter.

- (b) An Employer may not take any adverse employment action or in any other manner discriminate against an Employee because the Employee has exercised in good faith the rights protected under this chapter.
- (c) A person injured by a violation of this section may bring a civil action in the district court to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.
- (d) It is a rebuttable presumption of retaliation if an Employer or any other person discharges, disciplines, penalizes, interferes with, threatens, restrains, coerces, or otherwise retaliates or discriminates against an Employee within ninety (90) days of the person's exercise of rights protected in this chapter. However, in the case of seasonal work that ends before the close of the 90-day period, the presumption also applies if the Employer fails to rehire a former Employee at the next opportunity for work in the same position. The Employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.
- (e) Standard of proof. Proof of retaliation will be sufficient upon a showing that an Employer or any other person has taken an adverse action against a person and the person's exercise of rights protected was a motivating factor in the adverse action unless the Employer can prove that the action would have been taken in the absence of such protected activity.
- (f) The protections afforded apply to any person who mistakenly but in good faith alleges violations.
- (g) A complaint or other communication by any person triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

Sec. 224A.15 Remedies cumulative

The remedies, penalties, and procedures provided under this chapter are cumulative.

Sec. 224A.16 Preemption.

Nothing in this article 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 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.

Sec. 224A.17 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.

Sec. 224A.18 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, will not be affected thereby and will continue in full force and effect. To this end, the provisions of this article are severable.

SECTION 3

This Ordinance will take effect and be in force January 1, 2025.