

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1343

Docket No. 05.0009.0610

		resubmitted
DATE RECEIVED	1/30/87	2.25.87
REVIEW DATE	2/8/87	
DUE DATE	2/13/87	3-16-87
APPROVED		2.26.87
DISAPPROVED		
WITHDRAWN	2-13-87	

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED ✓
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

___ ~~Notice to Solicit Outside Information~~/Opinion
___ Date published in State Register
___ Comments

___ ~~Petition for Adoption of a Rule~~

___ Board's Authorizing Resolution

✓ Proposed rule
Yes Revisor's Certificate

___ Notice of Intent to Adopt Rule
177.28 1814.12 Statutory Authority
yes Small business statement
no Expenditure of public money statement
___ Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
11/18/86 Date (30)/25 days before adoption

✓ Publication in State Register
11/3/86 Date (30)/25 days before adoption

___ ~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting
12/31/86 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Steve Grunn Name of SAAG representing agency

___ ~~Notice of Submission to Attorney General~~

___ ~~Affidavit of Mailing Notice to Attorney General~~

✓ certificate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

ATTORNEY GENERAL

TO: STEVEN GUNN
Assistant Attorney General

DATE: 2/26/87

FROM: MARTHA CASSERLY
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Labor and Industry Relating to Fair Labor and Child Labor Standards

The above-referenced rule has been approved as to its legality by the Attorney General on February 26, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Labor and Industry

Adopted Permanent Rules Relating to Fair Labor and Child Labor Standards

Rules as Adopted

5200.0010 PROOF OF MINOR'S AGE.

Subpart 1. **Requirement.** Employers claiming an employee is under 18 must have his or her birthdate substantiated by a birth certificate or an age certificate issued by the local superintendent of schools, or a photocopy of the employee's driver's license, or a Minnesota identification card issued by the Department of Transportation included in the payroll records kept for the employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage and other penalties imposed for failure to keep and maintain records related to the employment of minors.

Subp. 2. [Unchanged.]

HANDICAPPED WORKERS

5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

Subpart 1. **Permit required.** Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50 percent of minimum wage, except as provided under subpart 4. "Performance" is based on a time study of handicapped workers as compared to a time study of nonhandicapped workers on the same job. The time study must be conducted under the same working conditions for the handicapped and the nonhandicapped.

Subp. 2. **Limit on work force at subminimum wage.** No profit-making organization may employ handicapped workers at a subminimum wage for more than ten percent of its total work

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force unless granted a special permit by the commissioner of labor and industry to exceed the ten percent limitation.

Subp. 3. **Sheltered workshops.** Sheltered workshops are excluded from the percentage limitations of numbers of employees and percentage of minimum wage contained in subparts 1 and 2, but not from the permit requirement.

Subp. 4. **United States labor permits.** Permits issued by the United States Department of Labor under Code of Federal Regulations, title 29, part 524 or 525, authorizing subminimum wage rates shall be accepted by the division in lieu of the permit required in subpart 1. Where the worker would otherwise be employed in a sheltered workshop, the commissioner of labor and industry may grant a special permit authorizing a wage rate of less than 50 percent of the minimum wage.

5200.0060 MEAL ALLOWANCE.

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee before any meal credit can be taken.

Meals must be consistent with the employee's work shift. Meal periods of less than 20 minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is 60 percent of the adult minimum wage rate for one hour of work per meal.

5200.0070 LODGING ALLOWANCE.

Subpart 1. **Conditions.** If practical or economic realities of the employment situation require employees to accept lodging

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owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging only as provided in either subpart 2 or 3.

Subp. 2. **Daily allowance.** A lodging allowance not to exceed 75 percent of the adult minimum wage for one hour of work may be taken per day if the lodging is adequate, decent, and sanitary according to usual and customary standards.

Subp. 3. **Fair market value.** Lodging, the nature of which is ordinarily and commonly considered to be a tenancy in the chief place of residence of the employee, shall be credited toward the minimum wage of that employee at the rate of the fair market value of the lodging. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a written or oral lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Subp. 4. **Seasonal employment.** Where employment is available only on a seasonal basis, the maximum lodging credit will be as provided in subpart 2.

5200.0080 GRATUITIES/TIPS CREDITS.

Subpart 1. [See Repealer.]

Subp. 2. [Unchanged.]

Subp. 3. **Computation of tip credit.** Tip credit is based on the amount of tips received and reported on signed statements by the employee divided by the number of hours worked in a given pay period and may not exceed the maximum credit set by Minnesota Statutes, section 177.28, subdivision 4.

Subp. 4. **Tip pooling or sharing of gratuities.** Pooling or sharing of gratuities may not be a condition of employment. An indirect service employee who benefits because the recipient shares the gratuity with him or her shall not have the remuneration considered in the calculation of his or her wages.

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Subp. 4a. **Obligatory charges.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, ~~and~~ and/or surcharges which are included in the statement of charges given to the customer.

Subp. 4b. **Clear and conspicuous notice.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, clear and conspicuous notice that the obligatory charge is not a gratuity is notice clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.

Subp. 5. [See Repealer.]

Subp. 6. **Direct service employee.** A "direct service employee" is one who in a given situation performs direct service for a customer and is to be considered a tipped employee. An indirect service employee ~~includes, but~~ is a person who assists a direct service employee, these include, but are not limited to, bus people, dishwashers, cooks, or hosts~~, or others who assist a direct service employee~~.

Subp. 7. **Credit cards or charges.** Gratuities presented to a direct service employee via inclusion on a charge or credit card shall be credited to that pay period in which they are received by the direct service employee and for which they appear on the direct service employee's tip statement.

Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the direct service employee minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

Subp. 8. **Divided gratuities.** When more than one direct service employee provides direct service to a customer or

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customers in a given situation such as banquets, cocktail and food service combinations, or other combinations, money presented by customers, guests, or patrons as a gratuity and divided among the direct service employees is not a violation of Minnesota Statutes, section 177.24, subdivision 3.

Subp. 9. [See Repealer.]

5200.0090 DEDUCTIONS.

Subpart 1. **When prohibited.** Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or rental of uniforms or nonhome maintenance of uniforms, consumable supplies, travel expenses, for spoilage, for breakage or other damage, for cash shortages or losses resulting from omissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery, or fines for disciplinary purposes. "Consumable supplies" means materials required to perform duties of employment that are used up in the course of employment. "Consumable supplies" may include, but are not limited to, materials used by cosmetologists in the care and beautification of the hair and body of customers, building and utility costs, office supplies, parts and materials used in manufacture or repair, and chemicals used in lawn care. "Travel expenses" means receipted out-of-pocket expenses for transportation, meals and lodging, or an agreed upon allowance, whichever is greater.

Subp. 2. **Indirect.** An indirect deduction is any recoupment or payment received by an employer by methods other than payroll deductions, such as cash payments or endorsing over of checks, or the purchase or rental of any of the items listed in Minnesota Statutes, section 177.24, subdivision 4, by the employee directly from the supplier.

5200.0120 HOURS WORKED.

Subpart 1. **General.** The minimum wage must be paid for all hours worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee

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must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Subp. 2. **On-call time.** An employee who is 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. An employee who is not required to remain on or near the employer's premises, but is merely required to leave word at the employee's home or with company officials where the employee may be reached is not working while on call.

Subp. 3. **Off-duty.** Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee's own purposes, are not hours worked.

Subp. 4. **Meals.** Bona fide meal periods are not hours worked. Bona fide meal periods do not include rest periods such as coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Thirty minutes or more is ordinarily long enough for a bona fide meal period. A shorter period may be adequate under special conditions. The employee is not completely relieved from duty if required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises, if the employee is otherwise completely freed from duties during the meal period. If the meal period is frequently interrupted by calls to duty, the employee is not relieved of all duties and the meal periods must be considered as hours worked.

5200.0121 SLEEPING TIME AND CERTAIN OTHER ACTIVITIES.

Subpart 1. **Less than 24-hour duty.** An employee who is required to be on duty for less than 24 hours is working even

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though the employee is permitted to sleep or engage in other personal activities when not busy except as provided in Minnesota Statutes, section 177.23, subdivision 11.

Subp. 2. **Duty of 24 hours or more.** If an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleeping period. If a sleeping period is of more than eight hours, only eight hours may be excluded. Where no expressed or implied agreement to the contrary is present, the lunch periods and up to eight hours of sleeping time constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so that the employee cannot get a minimum of five hours of sleep, the entire period must be counted as hours worked.

Subp. 3. **Employees residing on employer's premises or working at home.** An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily, an employee may enjoy periods of complete freedom from all duties, during which the employee may engage in normal private pursuits. These free periods are not considered hours worked.

5200.0211 SALARY.

Subpart 1. **Guaranteed <u>Predetermined</u> weekly wage.** A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum

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salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Subp. 2. **Weeks of no work.** Complete weeks in which an employee performs no work may be deducted from salary.

5200.0221 INDEPENDENT CONTRACTOR.

An independent contractor is not an employee. Parts 5222.0330 and 5222.0340 shall be used to determine whether an employment relation exists, except that control of the method and manner of performance is not the most important factor. All factors must be weighed to determine whether the worker is economically dependent upon the business to which the worker provides services.

5200.0241 STAFF MEMBER.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (5), "staff member" means any employee who spends more than half of the employee's working hours in direct personal assistance and guidance to campers. "Staff member" does not include a regular organizational noncamp employee who may be assigned temporarily to camp and does not include camp personnel hired primarily for the purpose of maintenance or kitchen chores.

5200.0242 SEASONAL BASIS DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, and part 5200.0070, "seasonal" means no more than 30 weeks in any calendar year. Any part of a calendar week shall be counted as a week.

5200.0251 PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES.

Sums due to employees who cannot be located shall be reported as unclaimed property under Minnesota statutes.

5200.0260 AGRICULTURE.

For purposes of Minnesota Statutes, section 177.23,

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subdivision 7, "agriculture" means farming in all its branches and includes, but is not limited to, dairying, the field production, cultivation, growing, and harvesting of any agricultural or horticulture commodity, and the raising of livestock, bees, fur-bearing animals, and poultry. Agriculture includes repair, maintenance, and construction work incidental to such operation and the cleaning, processing, preservation, loading, and transporting to market or storage of the farmer's own agricultural products. Industrial operations and processes that are more akin to manufacturing than to agriculture are not included. It does not include greenhouse work. It does not extend to outside services hired by the farmer. It does not include services performed for others, including, but not limited to, boarding or training of animals, lawn care, or landscaping.

5200.0261 SPECIFIED DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), the term "specified" shall be applied on a workweek-to-workweek basis and means all employees paid a salary where the employer has two or fewer employees paid a salary. Where employees paid a salary exceed two in any given workweek, the employer must designate in the payroll records which two are exempt and notify the employees concerned. The burden of proof will be on the employer should an employee claim non-notification.

5200.0262 FARMING UNIT OR OPERATION.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), a "farming unit" is a legal entity engaged in agricultural activities as defined by part 5200.0260. A farming operation is one or more commonly-owned farming units in which employees and/or equipment is shared. No more than two workers may be exempt under Minnesota Statutes, section 177.23, subdivision 7, clause (1), regardless of the number or location of the farming units that make up the farming operation.

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5200.0270 FAIR DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, a fair is an enterprise with or without payment of an admission fee that derives revenues principally from the sale of admission to events such as rides, sideshows, or exhibits. "Fair" includes amusement parks, carnivals, and circuses but does not include trade shows.

REPEALER. Minnesota Rules, parts 5200.0080, subparts 1, 5, and 9; 5200.0250; and 5200.0970, are repealed.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 26 1987
Joan Anderson Growe
Secretary of State
2:00 PM

APPROVED AS TO FORM AND LEGALITY
February 26, 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Labor and Industry

Proposed Permanent Rules Relating to Fair Labor and Child Labor Standards

Rules as Proposed

5200.0010 PROOF OF MINOR'S AGE.

Subpart 1. **Requirement.** Employers claiming an employee is under 18 must have his or her birthdate substantiated by a birth certificate or an age certificate issued by ~~the Department of Labor and Industry through~~ the local superintendent of schools, or a photocopy of the employee's driver's license, or a Minnesota identification card issued by the Department of Transportation included in the payroll records kept for ~~such~~ the employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage and other penalties imposed for failure to keep and maintain records related to the employment of minors.

Subp. 2. [Unchanged.]

HANDICAPPED WORKERS

5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

Subpart 1. **Permit required.** Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50 percent of minimum wage, except as provided under subpart 4. "Performance" is based on a time study of handicapped workers as compared to a time study of nonhandicapped workers on the same job. The time study must be conducted under the same working conditions for the handicapped and the nonhandicapped.

Subp. 2. **Limit on work force at subminimum wage.** No profit-making organization may employ handicapped workers at a

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subminimum wage for more than ten percent of its total work force unless granted a special permit by the commissioner of labor and industry to exceed the ten percent limitation.

Subp. 3. **Sheltered workshops.** Sheltered workshops are excluded from the above percentage limitations of numbers of employees and percentage of minimum wage contained in subparts 1 and 2, but not from the permit requirement.

Subp. 4. **United States labor permits.** Permits issued by the United States Department of Labor under Code of Federal Regulations, title 29, part 524 or 525, authorizing subminimum wage rates shall be accepted by the division in lieu of the permit required in subpart 1. Where the worker would otherwise be employed in a sheltered workshop, the commissioner of labor and industry may grant a special permit authorizing a wage rate of less than 50 percent of the minimum wage.

5200.0060 MEAL ALLOWANCE.

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee before any meal credit can be taken.

Meals must be consistent with the employee's work shift. Meal periods of less than 20 minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is ~~$1.15~~ 60 percent of the adult minimum wage rate for one hour of work per meal.

5200.0070 LODGING ALLOWANCE.

Subpart 1. **Conditions.** If practical or economic realities

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of the employment situation require employees to accept lodging owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging only as provided in either subpart 2 or 3.

Subp. 2. **Daily allowance.** A lodging allowance ~~of $1.50 per day may be credited towards the minimum wage if furnished by the employer and accepted by the employee. Such lodging must be~~ not to exceed 75 percent of the adult minimum wage for one hour of work may be taken per day if the lodging is adequate, decent, and sanitary according to usual and customary standards.

Subp. 3. **Fair market value.** ~~However,~~ Lodging, the nature of which is ordinarily and commonly considered to be a tenancy in the chief place of residence of the employee, shall be credited toward the minimum wage of that employee at the rate of the fair market value of the lodging ~~provided~~. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a written or oral lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Subp. 4. **Seasonal employment.** Where employment is available only on a seasonal basis, the maximum lodging credit will be as provided in subpart 2.

5200.0080 ~~TIP~~ GRATUITIES/TIPS CREDITS.

Subpart 1. [See Repealer.]

Subp. 2. [Unchanged.]

Subp. 3. **Computation of tip credit.** Tip credit is based on the ~~actual~~ amount of tips received and reported on signed statements by the employee divided by the number of hours worked in a given pay period and may not exceed the maximum credit set by Minnesota Statutes, section 177.28, subdivision 4. ~~A maximum tip credit may be allowed up to 20 percent of the applicable~~

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~~minimum-wage.--The-employer's-records-must-also-indicate-that the-individual-employee-received-at-least-$35-per-month-in gratuities-in-order-that-any-tip-credit-be-allowed-in-that period.~~

Subp. 4. **Tip pooling** or sharing of gratuities. ~~Tip~~ Pooling or sharing of gratuities may not be a condition of employment. ~~Tip-sharing-or-pooling-shall-be-on-an-individual person-to-person-basis.--Another~~ An indirect service employee who benefits because the recipient shares the gratuity with him or her shall not have ~~such~~ the remuneration considered in the calculation of his or her wages.

Subp. 4a. **Obligatory charges.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and surcharges.

Subp. 4b. **Clear and conspicuous notice.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, clear and conspicuous notice that the obligatory charge is not a gratuity is notice clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.

Subp. 5. [See Repealer.]

Subp. 6. **~~Service-person~~ Direct service employee.** A "direct service ~~person~~ employee" is one who in a given situation performs ~~the-main~~ direct service for a customer and is to be considered ~~the-recipient-of-the-gratuity-for-purposes-of-wage calculation~~ a tipped employee. An indirect service employee includes, but is not limited to, bus people, dishwashers, cooks, hosts, or others who assist a direct service employee.

Subp. 7. **Credit cards or charges.** Gratuities presented to a direct service ~~person~~ employee via inclusion on a charge or

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credit card shall be credited to that pay period in which they are received by the direct service employee and for which they appear on the direct service ~~person's~~ employee's tip statement.

Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the direct service ~~person~~ employee minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

Subp. 8. ~~Banquet~~ Divided gratuities. When more than one direct service employee provides direct service to a customer or customers in a given situation such as banquets, cocktail and food service combinations, or other combinations, money presented by customers, guests, or patrons ~~at a banquet~~ as a gratuity ~~to be~~ and divided among the ~~service people shall be credited to that time period for which it appears on the service person's tip statement~~ direct service employees is not a violation of Minnesota Statutes, section 177.24, subdivision 3.

Subp. 9. [See Repealer.]

5200.0090 DEDUCTIONS.

Subpart 1. When prohibited. Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or rental of uniforms or nonhome maintenance of uniforms, consumable supplies, travel expenses, for spoilage, for breakage or other damage, for cash shortages or losses resulting from ommissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery, or ~~for~~ fines for disciplinary purposes. ~~These are considered matters separate from wages. The term "uniform" means wearing apparel and accessories required by the employer to be worn by the employee as a condition of employment.~~ "Consumable supplies" means materials required to perform duties of employment that are used up in the course of employment. "Consumable supplies" may include, but are not limited to, materials used by cosmetologists in the care and beautification of the hair and body of customers, building

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and utility costs, office supplies, parts and materials used in manufacture or repair, and chemicals used in lawn care. "Travel expenses" means receipted out-of-pocket expenses for transportation, meals and lodging, or an agreed upon allowance, whichever is greater.

Subp. 2. **Indirect.** An indirect deduction is any recoupment or payment received by an employer by methods other than payroll deductions, such as cash payments or endorsing over of checks, or the purchase or rental of any of the items listed in Minnesota Statutes, section 177.24, subdivision 4, by the employee directly from the supplier.

5200.0120 HOURS WORKED.

Subpart 1. **General.** The minimum wage must be paid for all hours worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Subp. 2. **On-call time.** An employee who is 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. An employee who is not required to remain on or near the employer's premises, but is merely required to leave word at the employee's home or with company officials where the employee may be reached is not working while on call.

Subp. 3. **Off-duty.** Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee's own purposes, are not hours worked.

Subp. 4. **Meals.** Bona fide meal periods are not hours worked. Bona fide meal periods do not include rest periods such

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as coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Thirty minutes or more is ordinarily long enough for a bona fide meal period. A shorter period may be adequate under special conditions. The employee is not completely relieved from duty if required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises, if the employee is otherwise completely freed from duties during the meal period. If the meal period is frequently interrupted by calls to duty, the employee is not relieved of all duties and the meal periods must be considered as hours worked.

5200.0121 SLEEPING TIME AND CERTAIN OTHER ACTIVITIES.

Subpart 1. **Less than 24-hour duty.** An employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other personal activities when not busy except as provided in Minnesota Statutes, section 177.23, subdivision 11.

Subp. 2. **Duty of 24 hours or more.** If an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleeping period. If a sleeping period is of more than eight hours, only eight hours may be excluded. Where no expressed or implied agreement to the contrary is present, the lunch periods and up to eight hours of sleeping time constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so that the employee cannot get a minimum of five hours of sleep, the entire period must be counted as hours worked.

Subp. 3. **Employees residing on employer's premises or**

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working at home. An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily, an employee may enjoy periods of complete freedom from all duties, during which the employee may engage in normal private pursuits. These free periods are not considered hours worked.

5200.0211 SALARY.

Subpart 1. **Guaranteed weekly wage.** A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Subp. 2. **Weeks of no work.** Complete weeks in which an employee performs no work may be deducted from salary.

5200.0221 INDEPENDENT CONTRACTOR.

An independent contractor is not an employee. Parts 5222.0330 and 5222.0340 shall be used to determine whether an employment relation exists, except that control of the method and manner of performance is not the most important factor. All factors must be weighed to determine whether the worker is economically dependent upon the business to which the worker provides services.

5200.0241 STAFF MEMBER.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (5), "staff member" means any employee who spends more than half of the employee's working hours in direct personal assistance and guidance to campers. "Staff member" does not include a regular organizational noncamp employee who

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may be assigned temporarily to camp and does not include camp personnel hired primarily for the purpose of maintenance or kitchen chores.

5200.0242 SEASONAL BASIS DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, and part 5200.0070, "seasonal" means no more than 30 weeks in any calendar year. Any part of a calendar week shall be counted as a week.

5200.0251 PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES.

Sums due to employees who cannot be located shall be reported as unclaimed property under Minnesota statutes.

5200.0260 AGRICULTURE.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, "agriculture" means farming in all its branches and includes, but is not limited to, dairying, the field production, cultivation, growing, and harvesting of any agricultural or horticulture commodity, and the raising of livestock, bees, fur-bearing animals, and poultry. Agriculture includes repair, maintenance, and construction work incidental to such operation and the cleaning, processing, preservation, loading, and transporting to market or storage of the farmer's own agricultural products. Industrial operations and processes that are more akin to manufacturing than to agriculture are not included. It does not include greenhouse work. It does not extend to outside services hired by the farmer. It does not include services performed for others, including, but not limited to, boarding or training of animals, lawn care, or landscaping.

5200.0261 SPECIFIED DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), the term "specified" shall be applied on a workweek-to-workweek basis and means all employees paid a salary where the employer has two or fewer employees paid a

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salary. Where employees paid a salary exceed two in any given workweek, the employer must designate in the payroll records which two are exempt and notify the employees concerned. The burden of proof will be on the employer should an employee claim non-notification.

5200.0262 FARMING UNIT OR OPERATION.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), a "farming unit" is a legal entity engaged in agricultural activities as defined by part 5200.0260. A farming operation is one or more commonly-owned farming units in which employees and/or equipment is shared. No more than two workers may be exempt under Minnesota Statutes, section 177.23, subdivision 7, clause (1), regardless of the number or location of the farming units that make up the farming operation.

5200.0270 FAIR DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause 13, a fair is an enterprise with or without payment of an admission fee that derives revenues principally from the sale of admission to events such as rides, sideshows, or exhibits. "Fair" includes amusement parks, carnivals, and circuses but does not include trade shows.

REPEALER. Minnesota Rules, parts 5200.0080, subparts 1, 5, and 9; 5200.0250; and 5200.0970, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to
Fair Labor and Child Labor Standards

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5200

The attached rules are approved for publication
in the State Register

John C. Fuller
Assistant Deputy Revisor

Department of Labor and Industry

Adopted Permanent Rules Relating to Fair Labor and Child Labor Standards

Rules as Adopted

5200.0010 PROOF OF MINOR'S AGE.

Subpart 1. **Requirement.** Employers claiming an employee is under 18 must have his or her birthdate substantiated by a birth certificate or an age certificate issued by the local superintendent of schools, or a photocopy of the employee's driver's license, or a Minnesota identification card issued by the Department of Transportation included in the payroll records kept for the employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage and other penalties imposed for failure to keep and maintain records related to the employment of minors.

Subp. 2. [Unchanged.]

HANDICAPPED WORKERS

5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

Subpart 1. **Permit required.** Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50 percent of minimum wage, except as provided under subpart 4. "Performance" is based on a time study of handicapped workers as compared to a time study of nonhandicapped workers on the same job. The time study must be conducted under the same working conditions for the handicapped and the nonhandicapped.

Subp. 2. **Limit on work force at subminimum wage.** No profit-making organization may employ handicapped workers at a subminimum wage for more than ten percent of its total work

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force unless granted a special permit by the commissioner of labor and industry to exceed the ten percent limitation.

Subp. 3. **Sheltered workshops.** Sheltered workshops are excluded from the percentage limitations of numbers of employees and percentage of minimum wage contained in subparts 1 and 2, but not from the permit requirement.

Subp. 4. **United States labor permits.** Permits issued by the United States Department of Labor under Code of Federal Regulations, title 29, part 524 or 525, authorizing subminimum wage rates shall be accepted by the division in lieu of the permit required in subpart 1. Where the worker would otherwise be employed in a sheltered workshop, the commissioner of labor and industry may grant a special permit authorizing a wage rate of less than 50 percent of the minimum wage.

5200.0060 MEAL ALLOWANCE.

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee before any meal credit can be taken.

Meals must be consistent with the employee's work shift. Meal periods of less than 20 minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is 60 percent of the adult minimum wage rate for one hour of work per meal.

5200.0070 LODGING ALLOWANCE.

Subpart 1. **Conditions.** If practical or economic realities of the employment situation require employees to accept lodging

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owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging only as provided in either subpart 2 or 3.

Subp. 2. **Daily allowance.** A lodging allowance not to exceed 75 percent of the adult minimum wage for one hour of work may be taken per day if the lodging is adequate, decent, and sanitary according to usual and customary standards.

Subp. 3. **Fair market value.** Lodging, the nature of which is ordinarily and commonly considered to be a tenancy in the chief place of residence of the employee, shall be credited toward the minimum wage of that employee at the rate of the fair market value of the lodging. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a written or oral lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Subp. 4. **Seasonal employment.** Where employment is available only on a seasonal basis, the maximum lodging credit will be as provided in subpart 2.

5200.0080 GRATUITIES/TIPS CREDITS.

Subpart 1. [See Repealer.]

Subp. 2. [Unchanged.]

Subp. 3. **Computation of tip credit.** Tip credit is based on the amount of tips received and reported on signed statements by the employee divided by the number of hours worked in a given pay period and may not exceed the maximum credit set by Minnesota Statutes, section 177.28, subdivision 4.

Subp. 4. **Tip pooling or sharing of gratuities.** Pooling or sharing of gratuities may not be a condition of employment. An indirect service employee who benefits because the recipient shares the gratuity with him or her shall not have the remuneration considered in the calculation of his or her wages.

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Subp. 4a. **Obligatory charges.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, ~~and~~ and/or surcharges which are included in the statement of charges given to the customer.

Subp. 4b. **Clear and conspicuous notice.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, clear and conspicuous notice that the obligatory charge is not a gratuity is notice clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.

Subp. 5. [See Repealer.]

Subp. 6. **Direct service employee.** A "direct service employee" is one who in a given situation performs direct service for a customer and is to be considered a tipped employee. An indirect service employee includes, but is not limited to, bus people, dishwashers, cooks, hosts, or others who assist a direct service employee.

Subp. 7. **Credit cards or charges.** Gratuities presented to a direct service employee via inclusion on a charge or credit card shall be credited to that pay period in which they are received by the direct service employee and for which they appear on the direct service employee's tip statement.

Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the direct service employee minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

Subp. 8. **Divided gratuities.** When more than one direct service employee provides direct service to a customer or customers in a given situation such as banquets, cocktail and

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food service combinations, or other combinations, money presented by customers, guests, or patrons as a gratuity and divided among the direct service employees is not a violation of Minnesota Statutes, section 177.24, subdivision 3.

Subp. 9. [See Repealer.]

5200.0090 DEDUCTIONS.

Subpart 1. **When prohibited.** Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or rental of uniforms or nonhome maintenance of uniforms, consumable supplies, travel expenses, for spoilage, for breakage or other damage, for cash shortages or losses resulting from omissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery, or fines for disciplinary purposes. "Consumable supplies" means materials required to perform duties of employment that are used up in the course of employment. "Consumable supplies" may include, but are not limited to, materials used by cosmetologists in the care and beautification of the hair and body of customers, building and utility costs, office supplies, parts and materials used in manufacture or repair, and chemicals used in lawn care. "Travel expenses" means receipted out-of-pocket expenses for transportation, meals and lodging, or an agreed upon allowance, whichever is greater.

Subp. 2. **Indirect.** An indirect deduction is any recoupment or payment received by an employer by methods other than payroll deductions, such as cash payments or endorsing over of checks, or the purchase or rental of any of the items listed in Minnesota Statutes, section 177.24, subdivision 4, by the employee directly from the supplier.

5200.0120 HOURS WORKED.

Subpart 1. **General.** The minimum wage must be paid for all hours worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in

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the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Subp. 2. **On-call time.** An employee who is 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. An employee who is not required to remain on or near the employer's premises, but is merely required to leave word at the employee's home or with company officials where the employee may be reached is not working while on call.

Subp. 3. **Off-duty.** Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee's own purposes, are not hours worked.

Subp. 4. **Meals.** Bona fide meal periods are not hours worked. Bona fide meal periods do not include rest periods such as coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Thirty minutes or more is ordinarily long enough for a bona fide meal period. A shorter period may be adequate under special conditions. The employee is not completely relieved from duty if required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises, if the employee is otherwise completely freed from duties during the meal period. If the meal period is frequently interrupted by calls to duty, the employee is not relieved of all duties and the meal periods must be considered as hours worked.

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If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so that the employee cannot get a minimum of five hours of sleep, the entire period must be counted as hours worked.

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Subpart 1. **Guaranteed <u>Predetermined</u> weekly wage.** A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23,

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REPEALER. Minnesota Rules, parts 5200.0080, subparts 1, 5, and 9; 5200.0250; and 5200.0970, are repealed.

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MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

We are pleased to send you the enclosed material. Thank you for your interest, and please contact us if we can help you further.

2/6/87

Enclosed is the copy of the Notice of Intent to Adopt Rules without a Hearing (2 pages) as you requested.

Darlene Hunter
7-2225

RECEIVED
FEB 10 1987
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Minnesota Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101
612/296-6107

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STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS DIVISION

COPY

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division, of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Department of Labor and Industry, Labor Standards Division, proposes to adopt the above-captioned amendments to Minn. Rules, parts 5200.0010 - 5200.0250 and 5200.0970 without a public hearing. The Department has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Section 14.21 - 14.28 (1984).

Persons or groups interested in these amendments shall have 30 days to submit comments on the proposed amendments. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substnatial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. Section 14.131 - 14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to idenitify the portion of the proposed amendments addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

(612) 296-2342

Authority for the adoption of these amendments is contained in Minn. Stat. Section 177.28 and 181A.12 respectively. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The qualitative, quantitative impact on small business after the adoption of these rules will have no greater effect on small business than already placed on small business by the Legislature in the Minnesota Fair Labor Standards Act and Child Labor Standards Act.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written amendments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally proposed, or who wish to receive a free copy of the final amendments ad adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed amendments follows this notice in the State Register. The amendments relate to enforcement determinations under the Fair Labor Standards Act, Minn. Stat. Section 177.21 through 177.35 and a reporting requirement under the Child Labor Act, Minn. Stat. Section 181A.01 - 181A.12.

One free copy of the proposed amendments may be obtained by contacting Darlene Hueser at the above address or by calling (612) 297-2225.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe
Commissioner
Department of Labor and Industry

Dated: 10-17-86, 1986.

kmp(I)

STATE OF MINNESOTA
LABOR STANDARDS DIVISION

In the matter of the proposed adoption of amendments to Rules governing the Fair Labor Standards and Child Labor Standards

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The proposed rules are amendments to existing rules of the Department of Labor and Industry concerning enforcement determinations under the Fair Labor Standards Act (FLSA), Minnesota Statutes §§ 177.21 through 177.35 (1984 and Supp. 1985) and a reporting requirement under the Child Labor Standards Act (CLSA), Minnesota Statutes §§ 181A.01 - 181A.12 (1984 and Supp. 1985). In 1974 the FLSA was established to provide and safeguard overtime and minimum wage standards for workers and the CLSA was established to coordinate the employment of minors with school and safety considerations. Both the FLSA and the CLSA were modeled from the Federal Fair Labor Standards Act of 1938.

The existing rules were originally adopted in 1974 and 1977. Since that time, there have been several legislative changes to the FLSA, and policy developments which require clarification, interpretation and definition of terms. With respect to the FLSA, the existing rules do not fully reflect the changes, thus hampering the department's enforcement efforts. The proposed amendments are intended to update the rules for the enforcement purpose and to clarify the rule for employers' ease of compliance. Since the FLSA was modeled to a great extent on the Federal Fair Labor Standards Act of 1938, many of the definitions and interpretations are derived from the Federal Fair Labor Standards Act and Regulations and are well-accepted concepts. Some of the amendments are proposed to recognize changes in employment practices. The single amendment to the child labor rules deletes a reporting requirement that has proven ineffective.

The proposed amendments have been reviewed, revised, and approved by the Labor Standards Advisory Council. The Labor Standards Advisory Council was appointed for the purpose of consulting about administrative rules as required by Minn. Stat. § 177.28, subd. 2. The Labor Standards Advisory Council includes representatives for employees, employers, and the public.

Minn. Rule § 5200.0010/Proof of Minor's Age

This proposed amendment removes the department's obligation to supply forms for the purpose of verifying the age of a minor. Minnesota Statute § 181A.06 (1984) requires schools to issue age certificates to minors attending such schools at the minor's request. The statute does not require the department

to furnish the forms or t[redacted] school to use a form provi[redacted] by the department.

These forms were provided at no cost by the department as a courtesy. Due to budget restrictions and the increased expenses in enforcing the FLSA, this printing expense is no longer feasible. Forms are available from the Documents Section of the Department of Administration for a small fee, or schools have the option of duplicating or preparing their own forms (see also 5200.0970).

The proposed amendment makes reference to penalties required by legislative additions to Minn. Stat. § 181A.12. These penalties were added in 1983 and 1985. Laws of 1983, Ch. 301, Sec. 154 and Laws of 1985, Ch. 13, Sec. 295. The added reference in Part 5200.0010 more fully states the consequence for failure to provide proof of the ages of minors.

Minn. Rule § 5200.0030/Handicapped Workers

The proposed rule expands the permits accepted by the department to allow the payment of a subminimum wage rate to handicapped workers. The existing rule is divided into subparts for ease of use.

Subpart 1.

This addition, referring to the new subpart 4, is an editorial change. The proposed amendment defines performance for purpose of determining the appropriate subminimum wage rate as required under subpart. Time study is used because it is the most common method of measuring comparable performance in sheltered workshop settings and is also the method used under federal handicap worker regulations.

Subpart 4

The proposed amendment recognizes an on-going informal agreement with the Federal Wage and Hour Division of the U.S. Department of Labor to accept the federal permits in lieu of state permits. Recognition of federal permits eliminates duplication for the employer. Permits issued under 29 CFR 524 allow subminimum wage rates of not less than 50% of the minimum wage. Permits issued under 29 CFR 525 allow subminimum rates below 50% of the minimum wage in sheltered workshops or by special certificate.

The federal permits reflect Minnesota's substantive standards. The department recognizes the trend to place more handicapped workers in the community. Thus the proposed rule allows the commissioner to grant special permits when the worker would otherwise be in a sheltered workshop, for subminimum wage rates of less than 50% of the minimum wage. This permit is similar to the special permits issued under federal regulation 29 CFR 525.

§ 5200.0060/MEAL ALLOWANCE

This rule was originally established for the benefit of the employer to permit meal credit towards the minimum wage, pursuant to Minnesota Statutes § 177.28,

subd. 3. Experience of the department in enforcement of this rule indicates that some employers have not clearly understood the importance of the recordkeeping requirement. At times, employers have not made the record until well after the meal was accepted, and therefore, the record was of questionable accuracy. Further, some of the employers have felt they could take the meal credit even without the record. The proposed amendment clarifies the recordkeeping requirement for meal credit and will improve compliance with the rule by emphasizing that the records must be kept, and that the records must be kept before meal credit is taken. Since meal credit is taken each pay period, the records will be kept current. In addition, the amendment makes clearer that the department can deny meal credit if the record of the meal was not kept.

The change on the meal allowance from a dollar amount to a percentage of the adult minimum wage eliminates the need for constant rule changes when the minimum wage is changed. When this rule was originally established in January 1974, the meal credit was ninety cents and the minimum wage was $1.80. The minimum wage was raised to $2.30 in September of 1977 at which time the meal credit was raised to $1.15. The meal credit has not been changed since, but the minimum wage has risen to $3.35. Sixty percent of the adult minimum wage rate per meal was recommended by the Labor Standards Advisory Council.

§ 5200.0070/LODGING CREDIT

Minn. Stat. § 177.28, subd. 3 (1984) authorizes the commissioner to adopt rules regarding lodging furnished by an employer. The proposed amendment revises the existing rule to prevent abuses observed by the commissioner in conducting Fair Labor Standards Act investigations. Some of the abuses violate the legislative policy set forth in Minn. Stat. §177.22 (1984). In many instances, an employee is required to accept lodging owned or controlled by the employer, because it is either a condition of employment or because no other economically feasible lodging is available within a reasonable distance. Some employers have taken advantage of this and applied the lodging credit in a manner that results in the employee receiving no pay because the credit exceeds the minimum wage for the hours worked. This permits the employer free labor in some cases and does not safeguard adequate standards of living, nor does it sustain purchasing power as delineated in Minn. Stat. § 177.22 (1984).

Subpart 1:

This new subpart provides that the employer may recover the cost of lodging furnished as a condition of employment, but only in accordance with the rules that follow. This subpart is needed to prevent employers from taking the employee's entire income as lodging credit where the employee has no choice but to accept lodging provided by the employer.

Subpart 2:

The proposed amendment ties the lodging allowance to the minimum wage. It eliminates the need for a rule change if the minimum wage is changed. When this rule was originally established in January 1974, the lodging credit was $1.15 and the minimum wage was $1.80. The minimum wage was raised to $2.30

in September of 1977 at which time the lodging credit was raised to $1.50. The lodging credit has not been changed since, but the minimum wage has risen to $3.35. Seventy five percent of the adult minimum wage rate was recommended by the Labor Standards Advisory Council.

Subpart 3:

In the enforcement of the FLSA, the commissioner has noted several instances of employers taking full market value of an apartment for each employee living in that apartment. This practice violates the intent of Minn. Stat. § 177.22 (1984) which is to protect and safeguard overtime and minimum wage standards for workers. Employers should not be permitted more credit than the fair market value of the apartment nor should an employee be required to pay for more than their fair share of the apartment.

The rule is expanded to allow the employer to apply the lodging credit based on an oral lease rather than only a written lease. The written lease was used to establish the value of the lodging for purposes of applying the credit. However, it is possible to establish the value of lodging without a written lease. Many tenancy agreements are not in writing and the commissioner has found the rule's limitation to written tenancies unduly restrictive and unnecessary for the protection of employees once the value of the lodging is established.

Subpart 4:

The proposed amendment limits the lodging credit allowed towards the minimum wage for seasonal workers. The employer is restricted to a daily lodging allowance since the residence is not permanent. It is not uncommon for a college student to be employed by a resort on a seasonal basis. In this instance, the lodging may be the chief place of residence of the employee for the season with the student returning to college in the off season. If the fair market value of the lodging were permitted, the employee might not receive any money. Such a result violates the intent of Minnesota Statute § 177.22 (1984). It would also be unfair to the college student and inconsistent from the standpoint that other employees would have another residence and therefore, would fall under subpart 2. Therefore, the rule as proposed, treats all seasonal workers similarly and fairly concerning lodging allowances.

5200.0080/GRATUITIES/TIPS

The proposed rule deletes duplication of statutory language, renumbers the subparts, and defines terms for the purpose of determining compliance with statutes relating to gratuities.

Subpart 1

Subpart 1 of the existing rule is deleted because the language duplicates the statutes.

Subpart 3

The proposed amendment clarifies the conditions to be met before tip credit may be claimed as required under Minn. Stat. § 177.28, subd. 4 (Supp. 1985).

(See Laws of 1985, Ch. [illegible], Sec. 280.) The fact that an employee may receive and report more tips than needed for the tip credit does not allow an employer to exceed the maximum credit set by Minn. Stat. § 177.28, subd. 4, as some employers have interpreted the rule to permit. The rule cannot, of course, grant greater allowances than the statute provides. The added language is necessary to clarify the maximum credit permitted.

Subpart 4

The proposed rule is needed to change "another employee" to "indirect service employee" to be consistent with subpart 6. See subpart 6 for an explanation of the need and reasonableness of this rule. The sentence deleted duplicates the statute.

Subpart 4a

The proposed rule defines obligatory charges under Minn. Stat. § 177.23, subd. 9 (1984). The rule is needed to clarify for employers what charges may be reasonably construed as money intended for employees as a gratuity in the absence of clear and conspicuous notice that the obligatory charge is not a gratuity. "Service charge," "tip," gratuity," and "surcharge" were selected as examples of obligatory charges based on discussions with the Labor Standards Advisory Council.

Subpart 4b

Minn. Stat. § 177.23, Subd. 9 (1984) allows an employer to keep obligatory charges only if "clear and conspicuous" notice is given that the obligatory charge is not a gratuity. The proposed rule is needed to define what constitutes clear and conspicuous notice. The type sizes selected are large enough to read and are in common use whether commercially printed, typed, or hand-written.

Subpart 5

This rule is repealed because it failed to clarify obligatory charges and notice. Subparts 4a and 4b replace this subpart. Therefore, subd. 5 is now unnecessary.

Subpart 6

Rules adopted subsequent to rules hearings in 1974 and 1977 stated that only the individual providing the "main" service was eligible for tip credit. The existing rule does not recognize the possibility that more than one individual may provide the "main" service. As an example, it is not uncommon to be served by a cocktail waitperson in the restaurant bar and a food waitperson with one bill for both. Under the existing rule, the tip in this case would go to one waitperson and the other waitperson would only get a share of the tip, if the first waitperson voluntarily chose to share. The proposed rule is reasonable because it restates the concept of "main" by defining those individuals who provide the "main" service as "direct" service employees, and by defining those individuals who do not customarily provide the "main" service as "indirect" service employees. Thus the proposed rule assumes that there will be occasions where the customer may expect that the tips would be divided among the direct service employees. (See subp. 8 for further explanation of the need and reasonableness of this rule.)

Subpart 7

The proposed rule is needed to change "service employee" to "direct service employee" to be consistent with subpart 6 defining service employees. The new clause is needed to clarify that credit is based on tips received and reported on tip statements. Thus credit cannot be taken, for tips presented via credit card charges, until the tip is received. This procedure protects the employee in the event that the gratuity is never actually received.

Subpart 8

Minn. Stat. § 177.24, subd. 3(1984) prohibits any employer participation in the agreement to share tips. The proposed rule is needed to limit the definition of "participation" and allow the division of tips to direct service employees when the services of the employees are combined on one bill. This rule is reasonable because it acknowledges the practices of some restaurants to have more than one direct service employee providing service to the same customer.

Subpart 9

The existing rule is no longer necessary after phase out of tip credit in 1988. Other subparts were changed to clarify when credit may be claimed (see subparts 1 and 2).

5200.0090/DEDUCTIONS

Subpart 1

In 1984 and 1985, Minn. Stat. § 177.24 was amended to include prohibitions against deductions for rental of uniforms, consumable supplies and travel expenses. The definitions of consumable supplies and travel expenses are necessary to clarify the type of materials to be considered consumable and to clarify the meaning of travel expenses. The rule protects the employees from inconsistent and unreasonable interpretations by employers which would reduce available income to less than the minimum wage. It is a common practice of cosmetology shops to deduct the cost of supplies from employee commissions. This definition ensures that the employer does not get credit toward minimum wage for these supplies since the employee receives no benefit from the supplies. If the employee is required to pay for consumable supplies or travel expenses out of their own pocket, this in effect brings them below the minimum wage required by Minn. Stat. § 177.24 (Supp 1985). The rule properly places the burden of the cost of operating the business on the employer.

The sentence "these are considered matters separate from minimum wage" is deleted because it has no significance to the rule or the statute. The definition of "uniform" is deleted because it conflicts with the amendments to Minn. Stat. § 177.24, subd. 4(a) (See 1984 Laws of Minnesota, Chapter 628, article 4 and 1985 Laws of Minnesota, Chapter 13, Sections 276-278). The expansion of the list of shortages on losses that may not be deducted from an employee's minimum wage was made for clarification. "Other damage" and "other errors" were added to clarify that the list is not limited to the items specifically mentioned.

The broader language accomplishes the intent of Section 177.24 that the employee not be charged for ordinary business expenses of the employer caused by employee error or conduct of the customer resulting in losses.

Subpart 2

The proposed rule defines "indirect deduction" for purpose of Minn. Stat. § 177.24, subds. 2,4,5, (1984) and Subpart 1 of this rule. This rule is needed to prevent employers from requiring employees to sign wage checks back to them, to pay for items out of pocket, or purchase items directly from vendors in an attempt to circumvent the laws protecting employees from certain deductions. Without this definition, an employer can easily manipulate the meaning of "indirect" by saying that payment out of pocket, payment from tips, signing back of wage checks, or direct purchase of items from a vendor is allowed, because it is not an indirect deduction from wages. This rule supports the legislative intent that employees should not have to pay for items that the employer requires as a condition of employment where the items are of no personal use to the employee, particularly where minimum wage or uniform costs in excess of $50 are involved.

§ 5200.0120/HOURS WORKED

The proposed amendments to this section clarify the distinction between working hours versus non working hours. Both employers and employees benefit by this amendment because it sets out more specific guidelines for determining actual hours of work. The proposed amendments are derived from federal regulation (29 CFR 785) because the MFLSA is modeled after the federal act.

Subpart 1

This amendment emphasizes the requirement of minimum wages for all hours worked. The amendment also clarifies waiting time, whereby an employer engages an employee to wait on the premises of the employer until work is available. Where an employee is required to be on the premises for the employer's purpose, it is reasonable for the employer to pay for this service. The current rule implies that payment must be made for hours worked, but does not explicitly state that requirement. The amendment positively states the obligation.

Subpart 2

This amendment distinguishes or defines when on-call time is counted as hours worked (See 29 CFR 785.17). On-call time that meets the definition of hours worked must be paid at a rate of not less than the minimum wage. For on-call time which is not considered hours worked, the employer would not be required to pay this type of on-call time, nor would the employer be required to keep a record. The rule is needed to clarify to both employers and employees when an employee is entitled to wages, particularly when the employee is merely available, but not actually engaged in work. The "premises" distinction contained in the proposed rule is a reasonable means of identifying whether the employee is actually free to pursue personal activities or is primarily performing services for the employer.

Subpart 3

Off-duty periods are defined to resolve questions of hours worked for employees who may leave the work site when work is not available. This is to prevent meritless claims for wages during periods when an employee was not required to remain on the premises and was not performing duties.

Subpart 4

Unpaid meal periods are defined to be consistent with federal regulations (29 CFR 785.19). The proposed rule does not require an employer to provide a meal period, but does allow an employer to deduct meal periods provided.

Conformance with federal regulations simplifies procedures for employers as discussed in part 5200.0121 below.

5200.0121/SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

Since the FLSA was modeled after the Federal Fair Labor Standards Act, these proposed rules are derived from federal regulations (29 CFR 785.21, 785.22, and 785.23). Since many Minnesota employers are subject to both state and federal laws on the minimum wage and overtime, rules derived from the federal regulation (whenever possible) simplify the requirements that employers must follow to be in compliance with both state and federal laws.

Subpart 1

This proposed rule defines hours worked when the duty is less than 24 hours. The rule clarifies that even though an employee may be allowed to sleep during a work shift, all hours for that shift must be paid. The rule is reasonable because there are some occupations where the employee's attendance is the duty.

Subpart 2

This proposed rule is needed to allow an employer and employee to agree to exclude sleep time when the employee is required to be on duty for 24 hours or more. This is reasonable for those situations in which the employees must remain on the premise for 24 hours or more at a time because it allows the employer and employee to enter into an agreement on the hours of work while still fulfilling the intent of Minn. Stat. § 177.22 to safeguard and protect wage standards. The exclusion does not apply if the employee's duty results in interruptions which prevent the employee from getting at least five hours of sleep. In such cases, the employee is giving up personal confort and needs for the employer's benefit and should be compensated for the loss. The five hours need not be consecutive. Five hours is the standard used in federal regulations and is accepted as a reasonable minimum period of sleep.

Subpart 3

This proposed rule is needed to allow the employer to exclude an employee's free time and sleep time when the employee resides on the premise of the employer. The rule is reasonable because an employee who lives on the premises

cannot be presumed to be working at all times. Since the employer's premises is also the employee's home, the employee has periods in which he is free to pursue individual pursuits such as housekeeping, entertaining friends, hobbies, etc., unlike the employee who is required to remain on the employer's premises, such as a store clerk.

5200.0211/SALARY

Subpart 1

This proposed amendment defines salary for the purpose of determining when employees are exempt from the act as either bona fide executive, administrative, professional employees or as agricultural workers. The workweek is the standard used for determining compliance with the FLSA as provided by Minn. Rules, part 5200.0170. Thus, the predetermined amount of salary must be for a period of not less than a workweek. To allow an employer to deduct for lack of work in a given day in effect allows the employer to pay by the hour and thus would defeat the purpose of requiring a salary as part of the test to determine when an employee is exempt. An employer does not lose the exemption unless deductions reduce the salary below the minimum amount set by Minn. Stat. § 177.23, subd. 7, clause 2 (1984) or Minn. Rules, parts §§5200.0190 to 5200.0210 in that workweek. This provision clarifies the claculation method for salaried employees.

Subpart 2

The rule is needed and reasonable to clarify that an employer is not obligated to pay for complete weeks in which the employee does not work regardless of the reason. The provision prevents meritless claims from employees for payment during weeks in which no work is available or the employee is unable to work.

5200.0221/INDEPENDENT CONTRACTORS

The proposed rule is needed to determine the exclusion of certain workers from the act who are not specifically exempted under Minn. Stat. § 177.23, subd. 7. The present departmental rules for independent contractors, which are also used by the Department of Jobs and Training, are incorporated to provide consistency for Minnesota employers in determining employment status. However, the emphasis on control has been specifically rejected in the FLSA context. See Rutherford Food Corp. v McComb, 331 U.S. 722 (1947) and United States v Silk, 331 U.S. 704 (1947). The proposed rule thus de-emphasizes the weight given to control. Federal FLSA case law looks instead to the economic dependence of the workers on the business to which service is provided. See cases cited above.

5200.0241/**STAFF MEMBER**

The proposed amendment defines staff member of a children's camp for purposes of exemption from the act. The purpose of this amendment is to distinguish camp counselors whose hours are very difficult to determine and who may work around the clock with campers, as opposed to maintenance employees, cooks, and other permanent employees. The definition excludes maintenance employees,

cooks, and other permanent employees because their hours and duties are not so varied and irregular as to make it impractical to comply with the act.

5200.0242/SEASONAL

The proposed amendment is derived from federal statutes (29 U.S.C. 201, Sec. 13(a)(3)) and defines "seasonal" for purposes of exempting certain workers from the act and for determining the amount of lodging credit allowed.

5200.0250/MANDATORY PAYMENT OF WAGES

This rule is repealed because it repeats statutory language in Minn. Stat. § 181.101 (1984).

5200.0251/PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES

The proposed rule provides that the department will report sums deposited with the department to the Unclaimed Property Division rather than return the sums to the employer. The proposed rule complies with the requirements of Minn. Stat. § 354.41 (1984) on unclaimed property. As indicated by the policy underlying Minn. Stat. § 354.41 (1984), the employer should not benefit from the department's inability to locate former employees. The rule reflects the department's current practice of depositing the checks in an escrow account until the individuals can be located. If the individual is not found, the sums are reported to the Unclaimed Property Division. This rule is reasonable because it complies with the requirements of Minn. Stat. § 354.41 (1984) on unclaimed property.

5200.0260/AGRICULTURE

The proposed rule is derived from federal regulations (29 CFR 29 780). The rule is needed to define "agriculture" for purposes of exempting agricultural workers from the FLSA as provided by Minnesota Statute 177.23, subd. 7 (1984). The rule includes as "agriculture" those activities which are incidental to the farming operation and processing of the farmer's own products. Activities which are performed on a farm, but are more akin to industry than farming, are not included. See Holtville Alfalfa Mills v Wyatt, 230 F. 2d 398, Maneja v. Waialua, 349 U.S. 254, and Mitchell v Budd, 350 U.S. 473. Greenhouses are excluded based on the Minnesota Supreme Court Decision, Christgua v Woodlawn Cemetery Assoc., 208 Mn. 263, 293 N.W. 619 (1940), which found that greenhouses were more akin to industry than agriculture. Outside services hired by the farmer are also excluded, since the service is not performd by the farmer's workers even though the work is peformed on the farm. Also, Minn. Stat. § 177.25, subd. 4 (1984) provides a separate exemption for construction of farm silos. Services performed for others are also excluded because, while these services may appear to be agricultural because they involve animals or land, they do not involve the farmer's own products.

5200.0261/SPECIFIED

The proposed rule defines "specified" for purposes of Minn. Stat. § 177.23, subd. 7(1), which exempts up to two "specified" workers employed in agriculture and paid a salary. The intent of this exemption is to allow up to two workers to be exempt from the MFLSA. The workweek is the standard used for determining compliance with the FLSA as provided by Minn. Rules, part 5200.0170. The burden of proof is on the employer, because Minn. Stat. §177.30 (1984) requires an employer to keep information necessary for the enforcement of the FLSA.

5200.0262/FARMING UNIT OR OPERATION

The purpose of this rule is to define "farm unit" and "operation" to clarify the application of the exemption under Minn. Stat. § 177.23, Subd. 7(1). The rule is consistent with the customary concept of the small farm to which the exemption was intended to apply. It is needed to prevent abuse of the exemption by larger farming operations.

5200.0270/FAIR

Minn. Stat. § 177.23, subd. 7, clause 13 (1984), exempts seasonal workers of fairs from the FLSA. The proposed rule is needed to clarify that companies who are in the business of holding trade shows and conventions are subject to the FLSA. The department during some of its investigations found that some trade shows and conventions thought of themselves as a fair. As these shows are full time non-seasonal businesses, exempting them from the FLSA would be inconsistent with the intent and the specific language of the act. Minn. Stat. §177.23, subd. 7, clause 13 (1984) exempts "seasonal" carnival, circus, and fair employees, not those who are not seasonal workers.

5200.0970/MONTHLY REPORT ON EMPLOYMENT AND AGE CERTIFICATES

The repeal of this rule deletes a reporting requirement placed on the schools. This was a duplication of effort, since the employer receives a copy of the age certificate and is required to keep the age certificate as part of the employment records under Minn. Stat. § 181A.06, subd. 4 (1984). For enforcement purposes, the department needs only to verify that the employer's records include proof of age including age certificates.

IMPACT ON SMALL BUSINESS

Most firms subject to the FLSA and the CLSA are small businesses. Pursuant to Minnesota Statute 14.115, subdivision 2, the department has considered the impact of the proposed rules on small business and concludes that the rules have no greater effect on small business than that already placed on small business by the legislature in the FLSA and CLSA.

The rules do not add any compliance or reporting requirements to those contained in the statute. In fact, the repeal of Minnesota Rule 5200.0970 lessens reporting requirements.

There are no schedules or deadlines in these rules.

The rules are intended to simplify compliance for all employers. Most of the definitions clarify when a worker is not an employee for purposes of the Minnesota Fair Labor Standards Act.

There are no operations standards required in the proposed rules.

The statute does not specifically authorize exemptions for small businesses, but many of the exemptions benefit small businesses. The exemptions provided

by statutes and clarified in these proposed rules apply to individuals who may be employed in a business of any size. For example, the agricultural exemption aids the small farmer by allowing an exemption for two employees, but also aids the larger farm by providing another exemption for more than two employees. The proposed rules clarify when the exemptions apply to an individual so that all business owners including small business owners may be better informed of their legal rights and obligations.

These rules were developed through consultation with an advisory council as required by Minn. Stat. §177.28 (1984). The advisory council members included representatives of small businesses: The Minnesota Motel Association, Minnesota Restaurant, Hotel and Resort Association, and the Minnesota Retail Merchants Association.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

The department has considered the fiscal impact of these rules on local public bodies pursuant to Minnesota Statute § 14.11, subdivision 1 (1984) and has found none. These rules place no additional financial burden on local public bodies.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division, of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Darlene Heuser, being first duly sworn, deposes and says:

That on the 18 day of November, 1986, at the City of St. Paul, County or Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing a copy thereof in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, properly enveloped, with postage prepaid, on all persons and groups who have requested that their names be placed on the list maintained by the Minnesota Department of Labor and Industry, Labor Standards Division, for the purpose of receiving notice of the proposed adoption of rules by this Department.

Darlene Heuser

Subscribed and sworn to before me
this 17 day of Jan., 1986.
Robert J Rappe

kmp(I)

ROBERT J. KOPPE
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 19, 1992

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application, subject to any limitations imposed by federal or state statutes, is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101; and

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

Department of Labor and Industry

Proposed Permanent Rules Relating to Fair Labor and Child Labor Standards

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Labor Standards Division, proposes to adopt the above-captioned amendments to Minn. Rules, parts 5200.0010-5200.0250 and 5200.0970 without a public hearing. The Department has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Section 14.21-14.28 (1984).

Persons or groups interested in these amendments shall have 30 days to submit comments on the proposed amendments. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. Section 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these amendments is contained in Minn. Stat. Section 177.28 and 181A.12 respectively. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The qualitative, quantitative impact on small business after the adoption of these rules will have no greater effect on small business than already placed on small business by the Legislature in the Minnesota Fair Labor Standards Act and Child Labor Standards Act.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written amendments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally proposed, or who wish to receive a free copy of the final amendments as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed amendments follows this notice in the *State Register*. The amendments relate to enforcement determinations under the Fair Labor Standards Act, Minn. Stat. Section 177.21 through 177.35 and a reporting requirement under the Child Labor Act, Minn. Stat. Section 181A.01-181A.12.

One free copy of the proposed amendments may be obtained by contacting Darlene Hueser at the above address or by calling (612) 297-2225.

Dated: 17 October 1986

Steve Keefe, Commissioner
Department of Labor and Industry

Rules as Proposed

5200.0010 PROOF OF MINOR'S AGE.

Subpart 1. **Requirement.** Employers claiming an employee is under 18 must have his or her birthdate substantiated by a birth certificate or an age certificate issued by ~~the Department of Labor and Industry through~~ the local superintendent of schools, or a photocopy of the employee's driver's license, or a Minnesota identification card issued by the Department of Transportation included in the payroll records kept for ~~such~~ the employee. Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage and other penalties imposed for failure to keep and maintain records related to the employment of minors.

Subp. 2. [Unchanged.]

HANDICAPPED WORKERS

5200.0030 SUBMINIMUM WAGE RATES FOR HANDICAPPED WORKERS.

Subpart 1. **Permit required.** Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50 percent of minimum wage, except as provided under subpart 4. "Performance" is based on a time study of handicapped workers as compared to a time study of nonhandicapped workers on the same job. The time study must be conducted under the same working conditions for the handicapped and the nonhandicapped.

Subp. 2. **Limit on work force at subminimum wage.** No profit-making organization may employ handicapped workers at a subminimum wage for more than ten percent of its total work force unless granted a special permit by the commissioner of labor and industry to exceed the ten percent limitation.

Subp. 3. **Sheltered workshops.** Sheltered workshops are excluded from the ~~above~~ percentage limitations of numbers of employees and percentage of minimum wage contained in subparts 1 and 2, but not from the permit requirement.

Subp. 4. **United States labor permits.** Permits issued by the United States Department of Labor under Code of Federal Regulations, title 29, part 524 or 525, authorizing subminimum wage rates shall be accepted by the division in lieu of the permit required in subpart 1. Where the worker would otherwise be employed in a sheltered workshop, the commissioner of labor and industry may grant a special permit authorizing a wage rate of less than 50 percent of the minimum wage.

5200.0060 MEAL ALLOWANCE.

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee before any meal credit can be taken.

Meals must be consistent with the employee's work shift. Meal periods of less than 20 minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is ~~$1.15~~ 60 percent of the adult minimum wage rate for one hour of work per meal.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

5200.0070 LODGING ALLOWANCE.

Subpart 1. **Conditions.** If practical or economic realities of the employment situation require employees to accept lodging owned or controlled by the employer, or where the employee must accept that lodging as a condition of employment, the employer may credit toward the minimum wage the cost of the lodging only as provided in either subpart 2 or 3.

Subp. 2. **Daily allowance.** A lodging allowance ~~of $1.50 per day may be credited towards the minimum wage if furnished by the employer and accepted by the employee. Such lodging must be~~ not to exceed 75 percent of the adult minimum wage for one hour of work may be taken per day if the lodging is adequate, decent, and sanitary according to usual and customary standards.

Subp. 3. **Fair market value.** ~~However,~~ Lodging, the nature of which is ordinarily and commonly considered to be a tenancy in the chief place of residence of the employee, shall be credited toward the minimum wage of that employee at the rate of the fair market value of the lodging ~~provided~~. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a written or oral lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Subp. 4. **Seasonal employment.** Where employment is available only on a seasonal basis, the maximum lodging credit will be as provided in subpart 2.

5200.0080 ~~TIP~~ GRATUITIES/TIPS CREDITS.

Subpart 1. [See Repealer.]

Subp. 2. [Unchanged.]

Subp. 3. **Computation of tip credit.** Tip credit is based on the ~~actual~~ amount of tips received and reported on signed statements by the employee divided by the number of hours worked in a given pay period and may not exceed the maximum credit set by Minnesota Statutes, section 177.28, subdivision 4. ~~A maximum tip credit may be allowed up to 20 percent of the applicable minimum wage. The employer's records must also indicate that the individual employee received at least $35 per month in gratuities in order that any tip credit be allowed in that period.~~

Subp. 4. **Tip pooling or sharing of gratuities.** ~~Tip~~ Pooling or sharing of gratuities may not be a condition of employment. ~~Tip sharing or pooling shall be on an individual person-to-person basis. Another~~ An indirect service employee who benefits because the recipient shares the gratuity with him or her shall not have ~~such~~ the remuneration considered in the calculation of his or her wages.

Subp. 4a. **Obligatory charges.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and surcharges.

Subp. 4b. **Clear and conspicuous notice.** For purposes of Minnesota Statutes, section 177.23, subdivision 9, clear and conspicuous notice that the obligatory charge is not a gratuity is notice clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.

Subp. 5. [See Repealer.]

Subp. 6. ~~Service person~~ **Direct service employee.** A "direct service ~~person~~ employee" is one who in a given situation performs ~~the main~~ direct service for a customer and is to be considered ~~the recipient of the gratuity for purposes of wage calculation~~ a tipped employee. An indirect service employee includes, but is not limited to, bus people, dishwashers, cooks, hosts, or others who assist a direct service employee.

Subp. 7. **Credit cards or charges.** Gratuities presented to a direct service ~~person~~ employee via inclusion on a charge or credit card shall be credited to that pay period in which they are received by the direct service employee and for which they appear on the direct service ~~person's~~ employee's tip statement.

Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the direct service ~~person~~ employee minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

Subp. 8. ~~Banquet~~ **Divided gratuities.** When more than one direct service employee provides direct service to a customer or customers in a given situation such as banquets, cocktail and food service combinations, or other combinations, money presented by customers, guests, or patrons ~~at a banquet~~ as a gratuity ~~to be~~ and divided among the ~~service people shall be credited to that time period for which it appears on the service person's tip statement~~ direct service employees is not a violation of Minnesota Statutes, section 177.24, subdivision 3.

Subp. 9. [See Repealer.]

5200.0090 DEDUCTIONS.

Subpart 1. **When prohibited.** Deductions from the minimum wage, whether direct or indirect, may not be made for shortages in money receipts or merchandise, for the purchase or rental of uniforms or nonhome maintenance of uniforms, consumable supplies, travel expenses, for spoilage, for breakage or other damage, for cash shortages or losses resulting from ommissions or other errors, for walkouts, bad checks, bad credit slips, missing guest checks, or robbery, or ~~for~~ fines for disciplinary purposes. ~~These are considered matters separate from wages. The term "uniform" means wearing apparel and accessories required by the employer to be worn by the employee as a condition of employment.~~ "Consumable supplies" means materials required to perform duties of employment that are used up in the course of employment. "Consumable supplies" may include, but are not limited to, materials used by cosmetologists in the care and beautification of the hair and body of customers, building and utility costs, office supplies, parts and materials used in manufacture or repair, and chemicals used in lawn care. "Travel expenses" means receipted out-of-pocket expenses for transportation, meals and lodging, or an agreed upon allowance, whichever is greater.

Subp. 2. **Indirect.** An indirect deduction is any recoupment or payment received by an employer by methods other than payroll deductions, such as cash payments or endorsing over of checks, or the purchase or rental of any of the items listed in Minnesota Statutes, section 177.24, subdivision 4, by the employee directly from the supplier.

5200.0120 HOURS WORKED.

Subpart 1. **General.** The minimum wage must be paid for all hours worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available. Rest periods of less than 20 minutes may not be deducted from total hours worked.

Subp. 2. **On-call time.** An employee who is 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. An employee who is not required to remain on or near the employer's premises, but is merely required to leave word at the employee's home or with company officials where the employee may be reached is not working while on call.

Subp. 3. **Off-duty.** Periods when the employee is completely relieved of duty and free to leave the premises for a definite period of time, and the period is long enough for the employee to use for the employee's own purposes, are not hours worked.

Subp. 4. **Meals.** Bona fide meal periods are not hours worked. Bona fide meal periods do not include rest periods such as coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Thirty minutes or more is ordinarily long enough for a bona fide meal period. A shorter period may be adequate under special conditions. The employee is not completely relieved from duty if required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises, if the employee is otherwise completely freed from duties during the meal period. If the meal period is frequently interrupted by calls to duty, the employee is not relieved of all duties and the meal periods must be considered as hours worked.

5200.0121 SLEEPING TIME AND CERTAIN OTHER ACTIVITIES.

Subpart 1. **Less than 24-hour duty.** An employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other personal activities when not busy except as provided in Minnesota Statutes, section 177.23, subdivision 11.

Subp. 2. **Duty of 24 hours or more.** If an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleeping period. If a sleeping period is of more than eight hours, only eight hours may be excluded. Where no expressed or implied agreement to the contrary is present, the lunch periods and up to eight hours of sleeping time constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so that the employee cannot get a minimum of five hours of sleep, the entire period must be counted as hours worked.

Subp. 3. **Employees residing on employer's premises or working at home.** An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

premises. Ordinarily, an employee may enjoy periods of complete freedom from all duties, during which the employee may engage in normal private pursuits. These free periods are not considered hours worked.

5200.0211 SALARY.

Subpart 1. **Guaranteed weekly wage.** A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Subp. 2. **Weeks of no work.** Complete weeks in which an employee performs no work may be deducted from salary.

5200.0221 INDEPENDENT CONTRACTOR.

An independent contractor is not an employee. Parts 5222.0330 and 5222.0340 shall be used to determine whether an employment relation exists, except that control of the method and manner of performance is not the most important factor. All factors must be weighed to determine whether the worker is economically dependent upon the business to which the worker provides services.

5200.0241 STAFF MEMBER.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (5), "staff member" means any employee who spends more than half of the employee's working hours in direct personal assistance and guidance to campers. "Staff member" does not include a regular organizational noncamp employee who may be assigned temporarily to camp and does not include camp personnel hired primarily for the purpose of maintenance or kitchen chores.

5200.0242 SEASONAL BASIS DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, and part 5200.0070, "seasonal" means no more than 30 weeks in any calendar year. Any part of a calendar week shall be counted as a week.

5200.0251 PAYMENT OF BACK WAGES AND/OR GRATUITIES TO MISSING EMPLOYEES.

Sums due to employees who cannot be located shall be reported as unclaimed property under Minnesota statutes.

5200.0260 AGRICULTURE.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, "agriculture" means farming in all its branches and includes, but is not limited to, dairying, the field production, cultivation, growing, and harvesting of any agricultural or horticulture commodity, and the raising of livestock, bees, fur-bearing animals, and poultry. Agriculture includes repair, maintenance, and construction work incidental to such operation and the cleaning, processing, preservation, loading, and transporting to market or storage of the farmer's own agricultural products. Industrial operations and processes that are more akin to manufacturing than to agriculture are not included. It does not include greenhouse work. It does not extend to outside services hired by the farmer. It does not include services performed for others, including, but not limited to, boarding or training of animals, lawn care, or landscaping.

5200.0261 SPECIFIED DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), the term "specified" shall be applied on a workweek-to-workweek basis and means all employees paid a salary where the employer has two or fewer employees paid a salary. Where employees paid a salary exceed two in any given workweek, the employer must designate in the payroll records which two are exempt and notify the employees concerned. The burden of proof will be on the employer should an employee claim non-notification.

5200.0262 FARMING UNIT OR OPERATION.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, clause (1), a "farming unit" is a legal entity engaged in agricultural activities as defined by part 5200.0260. A farming operation is one or more commonly-owned farming units in which employees and/or equipment is shared. No more than two workers may be exempt under Minnesota Statutes, section 177.23, subdivision 7, clause (1), regardless of the number or location of the farming units that make up the farming operation.

5200.0270 FAIR DEFINED.

For purposes of Minnesota Statutes, section 177.23, subdivision 7, a fair is an enterprise with or without payment of an admission fee that derives revenues principally from the sale of admission to events such as rides, sideshows, or exhibits. "Fair" includes amusement parks, carnivals, and circuses but does not include trade shows.

REPEALER. Minnesota Rules, parts 5200.0080, subparts 1, 5, and 9; 5200.0250; and 5200.0970, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR STANDARDS

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division, of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled amendments to rules was published in the State Register on November 3, 1986 and was sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes § 14.14, subdivision 1a and § 14.22 on November 4, 1986 and November 18, 1986. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rules were received by the Department. No requests for notice of submission to the attorney general were received by the Department.

Based on the comments and evidence in the record before the Department, I find the following:

FINDINGS OF FACT

1. During the 30-day comment period following publication of the proposed amendments, comments were received which are the basis for the changes to the proposed amendments described at findings "2a" through "c" below.

2. The changes and the rationale for the changes to the proposed amendments, all of which are nonsubstantial, are as follows:

   a. Part 5200.0080, subpart 4a, **Obligatory charges**. For purposes of Minnesota Statute § 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities and/or surcharges which are included in the statement of charges given to the customer.

This modification is added at the suggestion by Judy Vitek Hewes of Upper Midwest Hospitality, Inc. and member of the Labor Standards Advisory Council. In her phone call of December 3, 1986, followed by a letter the same day, Ms. Hewes expressed concern that the rule without the modification would not be clear.

The modification is reasonable because sums not included in the statement of charges are discretionary rather than obligatory. The modification is not a substantial change.

b. Part 5200.0211, subpart 1, **~~Guaranteed~~ Predetermined Weekly Wage**. A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statute § 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

This title change is the recommendation of Paul Brutlag, Sugarbeet Growers Association. In a phone conversation on November 19, 1986, Mr. Brutlag expressed his concerns that "guaranteed" suggested a more restrictive application than the rule itself implies and may be misunderstood by agricultural employers.

The change is made to address these concerns and encourage compliance. It does not change the application of the rule and is not a substantial change.

Based on the Findings of Fact, I make the following:

CONCLUSIONS

1. That the Department gave proper notice of the proposed amendments to all interested persons and groups.

2. That the Department has fully complied with all procedural requirements of law or rule in adopting the proposed amendments.

3. That the Department has accepted within its statutory authority in adopting the proposed amendments.

4. That the proposed amendments, as modified, are needed and reasonable and fully comply with substantial requirements imposed by law or rule.

NOW, THEREFORE, IT IS ORDERED that the rule identified as proposed Amendments to Rules Governing Fair Labor Standards and Child Labor Standards is adopted this 31 day of December, 1986, pursuant to authority vested in the Commissioner of Labor and Industry by Minnesota Statutes §§ 177.28 and 171A.12 (1984).

State of Minnesota

Ray Bohn, Commissioner
Department of Labor and Industry

Dated: 12-31-86

mmw

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR STANDARDS

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division, of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The proposed amendment to M.C.A.R. 5200.0080, subpart 6 as submitted to the Attorney General's Office is hereby withdrawn from consideration. In its place, the Department submits the following change:

M.C.A.R. 5200.0080, subp. 6

Indirect Service Employee

> An indirect service employee is a person who assists a direct service employee, these include, but are not limited to, bus people, dish washers, cooks, or hosts.

This change is made upon the recommendation of the Attorney General's Office for purposes of stating more accurately the definition of "indirect service person".

Dated: 2-24-87

RAY BOHN
Commissioner
Department of
Labor and Industry

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY
444 Lafayette Road
Saint Paul
Minnesota 55101
Telephone:
612/296-6107

December 4, 1986

Mr. John C. Fuller
Assistant Deputy Revisor
Office of the Revisor of Statutes
700 State Office Building
435 Park Street
St. Paul, MN 55155-1297

Re: RD 1010 - Fair Labor and Child Labor Standards

Dear Mr. Fuller:

Please make the modifications indicated to our proposed rules. Sub. part 4a of Minnesota Rule 5200.0050, Gratuities/Tip Credit, is recommended by Judy Vitek Hewes in the attached letter. Paul Brutlag of the Sugar Beets Growers Association, in a phone conversation on November 19, 1986, also recommended a change in the title for Minnesota Rule 5200.0211, Salary .

Please provide sufficient copies to submit to the Attorney General.

Respectfully,

Donald G. Jackman

Donald G. Jackman
Director
Division of Labor Standards

DH:mmw

Attachment

MINNESOTA RESTAURANT·HOTEL·RESORT ASSNS.

UPPER MIDWEST HOSPITALITY, INC.

871 Jefferson Ave., St. Paul, MN 55102 Phone (612) 222-7401

December 3, 1986

RECEIVED
DEC 4 1986
DIVISION OF
LABOR STDS.

Mr. Don Jackman
Director of Labor Standards
Minnesota Department of Labor & Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Dear Don:

As a followup to our phone conversation this morning, I would like to clarify the wording we agreed to for the section on Obligatory charges in the proposed amendments to the Rules, parts 5200.0010-5200.0970.

CURRENT PROPOSED LANGUAGE:

Subp. 4a. Obligatory charges. For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and surcharges.

PROPOSED NEW LANGUAGE:

Subp. 4a. Obligatory charges. For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and/or other surcharges which are included in the statement of charges given to the customer.

I understand from your phone message that this change can be made and included in the final regulations. I am glad this can be done since it does not change the meaning, but more clearly defines it. Thank you for your cooperation in making this change.

Sincerely,

Judy Hewes

Judy Vitek Hewes
Director of Administration

JVH:sa

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY
444 Lafayette Road
Saint Paul
Minnesota 55101
Telephone:
612/296-6107

December 5, 1986

Judy Vitek Hewes
Director of Administration
Upper Midwest Hospitality, Inc.
871 Jefferson Ave.
St. Paul, MN 55102

Dear Ms. Hewes:

I have discussed the contents of your letter with the Labor Standard Division. I am informed by them that the recommendation contained in your letter was submitted to the Office of Revisor for inclusion in the proposed rules.

I want to thank you for your participation in the advisory council. Your dedication with the other members of the council is greatly appreciated by those of us in government.

Sincerely,

Ray Bohn
Commissioner

RB:DJ/jk

UPPER MIDWEST HOSPITALITY, INC.
871 Jefferson Ave., St. Paul, MN 55102 Phone (612) 222-7401

December 3, 1986

Commissioner Ray Bohn
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

RECEIVED
DEC 04 1986
DEPT. OF LABOR & INDUSTRY
ASST. COMM. OFFICE

Dear Commissioner Bohn:

RE: Department of Labor and Industry Amendments to Minn. Rules, Parts 5200.0010 - 5200.0250 and 5200-0970

I served on the Department of Labor and Industry Task Force which helped develop the amendments to the abovementioned Rules. The process took many months and number of meetings. I am happy to have had the opportunity to have input into the proposed amendments. I believe the end result is better when those who are affected by the regulations have input into them.

At our final meeting, the entire Task Force went through the proposed amendments word for word and agreed on the final recommendations. The rules published in the State Register follow those recommendations in most cases. However, there is one section where the language agreed to and recommended by the Task Force was completely deleted and new language used. This is in Subpart 4a which defines obligatory charges under Minn. Stat. 177.23, subd. 9. The proposed language as published reads as follows:

> Subp. 4a. Obligatory charges. For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and surcharges.

I would like to propose an addition to this section which I believe more clearly defines that an "obligatory charge" occurs when it is on the statement of charges given to the customer. I would propose the following language:

> Subp. 4a. Obligatory charges. For purposes of Minnesota Statutes, section 177.23, subdivision 9, obligatory charges which might reasonably be construed by the guest, customer, or patron as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to, service charges, tips, gratuities, and/or other surcharges which are included in the statement of charges given to the customer.

I understand the Rules are to clarify and define the language of the Statutes. Although I believe the additional language I have proposed will help clarify this section, the language of Minn. Stat. 177.23, Subd. 9 defines "gratuities" in a way that is not consistent with commonly understood industry standards, Federal Wage & Hour definitions or IRS definitions used in the "tip reporting" regulations which took effect January 1, 1983.

I understand that any change in the Statutes must be done through the Legislative process and we hope to propose this in the next Legislative Session. A bill was introduced in the last session which would have made the language clearer and more in line with accepted industry standards. The bill passed through the House Committees and House Floor, but was stymied in a Senate Committee in the last hours of the Session.

We hope we can be more successful in the next session because there seems to be a good deal of misunderstanding by both employers and employees as to what constitutes a "tip or gratuity" as compared to a "service charge." We hope we will have the opportunity to discuss this with you further in the future.

The Minnesota Restaurant, Hotel & Resort Associtions are dedicated to informing and educating our members about the laws that pertain to our industry. We will continue to do everything we can to encourage our members to comply with the laws. We will also continue our efforts to make the laws as reasonable and understandable as possible. We welcome the opportunity of working with you and the Minnesota Department of Labor and Industry to accomplish these goals.

Sincerely,

Judy Vitek Hewes

Judy Vitek Hewes
Director of Administration

JVH

CC: Tom Newcome

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS DIVISION

In the Matter of the Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

DECLARATION OF COUNSEL

I Steven M. Gunn, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rule-making record and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010, have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is .0610.

STEVEN M. GUNN
Assistant Attorney General
Suite 200, 520 Lafayette Road
St. Paul, MN 55155
(612) 296-6590

RECEIVED
JAN 29 1987
DIVISION OF
LABOR STDS.

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LABOR STDS.

RECEIVED
JAN 30 1987
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS DIVISION

In the Matter of the Proposed Adoption by the Minnesota Department of Labor and Industry, Labor Standards Division, of Amendments to Rules Governing Fair Labor Standards and Child Labor Standards.

CERTIFICATE

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I hereby certify that the list of interested persons and groups who have requested, pursuant to Minn. Stat. Section 14.22 (1984), that their names be placed on the list maintained by the Minnesota Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 10 AM this 18 day of November, 1986.

Darlene Hueser
Darlene Hueser

kmp(I)

Labor Stds Division Rule

1. ~~[illegible]~~ "include but not limited to" - ~~pg 4, line 5~~
unessary - pg 4, line 21
~~pg 5, line 17~~
~~pg 9, line 1~~
~~pg 9, line 12~~

2. ~~Specific Std? - pg 6, line 23-24~~

3. add clause 13 - pg 10, line 3

only problems - pg 4, line 21
pg 10, line 3

Notice of Intent - Missing
But will be forwarded asap.
There is a copy of the notice in
the publication
2/10 Recd

Rule
p4 lines 18 - 23 I dont understand
agree not very clear, but in conjunction with statute, together is clear

There are a few "may"s, but I dont
think they are dangerous.
p 3 line 10 } ok b/c it is regulatee, not state
p 7 line 4 } agency is given the discretion

Authority 177.28 ok - 181A, 12

I N T E R O F F I C E M E M O R A N D U M

To: Steve Gunn
Special Assistant Attorney General

From: Donald G. Jackman
Director, Division of Labor Standards

Date: January 7, 1987

Subject: Amendments to Rules Governing Fair Labor Standards and Child Labor Standards

Enclosed for your review and approval are the following documents:

Copy of the **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION ON PROPOSED AMENDMENTS TO RULES GOVERNING FAIR LABOR STANDARDS AND CHILD LABOR STANDARDS** as published on Monday, August 4, 1986 in the State Register.

ORDER FOR PUBLICATION AND FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING signed by Commissioner Keefe on October 17, 1986.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING signed by Commissioner Keefe on October 17, 1986.

Copy of the October 13, 1986 certified copy of the proposed rules.

STATEMENT OF NEED AND REASONABLENESS.

Notarized **AFFIDAVIT OF MAILING** signed by Darlene Hueser on January 7, 1987.

CERTIFICATE regarding the accuracy and completeness of the Department's mailing list signed by Darlene Hueser.

Copy of the **NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING** including the rules as proposed as published on Monday, November 3, 1986 in the State Register.

Four copies of the rule as adopted (dated December 5, 1986).

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING signed by Commissioner Bohn on December 31, 1986.

Comments on the rule received by the agency:

12-3-86 Judy Vitek Hewes - Upper Midwest Hospitality, Inc.

12-1-86 Robert C. Lyman and James C. Strothman - Migrant Legal Services

11-19-86 Paul Brutlag (Telephone)

11-19-86 Bob Lyman (Telephone)

_____ **DECLARATION OF COUNCIL** for your signature.

DH:mmw

Enclosures

c: Penny Johnson