
Business Tax Education Partnership

Business Tax Education Partnership: A cooperative partnership of the Minnesota Department of Revenue (MDOR), the Minnesota Unemployment Insurance Program (UIMN) at the Minnesota Department of Employment and Economic Development (DEED), and the Internal Revenue Service (IRS).

Introduction to Employment Taxes and Employer Issues and Responsibilities Guide

This document is available in alternative formats to individuals with disabilities by calling (651) 282-9999 in the Metro area, 1-800 6557-3594 in Greater Minnesota or 711 for Minnesota Relay Service.

Introduction

This employment guide provides an overview of your obligations as an employer. Although it is not all-inclusive — no such course could hope to give you all you need to know about employment taxes and other employment issues — it will acquaint you with the major ones. Just as importantly, the guide will let you know whom and where to call when you have questions.

This guide has been produced using input obtained from many different federal and state agencies, all of which you may need to deal with in your business.

We offer this workshop to help you, as employers, know what your responsibilities are when you hire an employee. Our goal is to help you identify, complete and file the appropriate forms for the various agencies.

Worker Status Issues

Employees Defined by Law

Common Law Employee (Internal Revenue Code Section 3121(d)(2))

The common law, a major part of the justice system in the United States, flows chiefly from court decisions. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law of agency. Whether one party, the principal, is legally responsible for the acts or omissions of another party, the agent, depends on the principal's right to direct and control the agent.

Following this standard, the employment tax regulations provide that an employment relationship exists if the principal has the right to direct and control the worker who performs the services. Control exists where the principal influences not only the results to be accomplished, but also the means and details by which the results are to be accomplished. That is, where the worker is subject to the will and control of the principal not only as to what is to be done, but how it shall be done. Only the right to control has to exist, it does not have to be exercised.

Corporate Officer (Internal Revenue Code Section 3121(d)(1))

An officer of a corporation is generally an employee. However, an officer who does not perform any services as an officer or performs only minor services is not considered an employee if he neither receives nor is entitled to receive any remuneration, directly or indirectly. An officer is an employee of his/her corporation even if he/she is the sole shareholder and, as such, controls his/her own duties and remuneration.

Leased Employee

An employee-leasing firm or, Professional Employer Organization (PEO), as they prefer to be called, provides its employees to other firms, persons, and employers without severing its employer-employee relationship with the workers for the services performed for the lessee. All PEO firms that operate in Minnesota must register with the Minnesota Department of Commerce.

If a PEO firm provides 50 percent or more of a legal entity's workers, the legal entity is directly liable for payment of all *state unemployment* tax, penalties, interest and collection costs that are due or become due from the wages paid on the contract, unless the employee leasing firm provides a bond to guarantee the payments.

Statutory Employee

Workers in certain specified occupational groups who do not meet the test of employee status under the common law control standard might still be statutory employees under IRC section 3121(d)(3) if they work under certain circumstances. The occupational groups are:

- Agent Drivers or Commission Drivers
- Full Time Life Insurance Salespersons
- Home Workers
- Traveling or City Salespersons

In order for statutory employee status to apply when a worker performs services as a worker in the categories above, three general requirements must be met:

1. The contract or service must state that the worker will perform substantially all of the work personally.
2. The worker has no substantial investment in facilities other than transportation facilities used in performing the work.
3. There is a continuing work relationship between the worker and the business for which the services are performed.

The occupational categories are very specific as to who is included, and some have additional specific requirements.

Agent Drivers or Commission Drivers: The statute applies to only those drivers who distribute meat or meat products, vegetable or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for a business. The drivers may sell at either retail or wholesale, and may drive their own vehicles or those of the business for which they work.

Full-time Life Insurance Salespersons: This group includes only salespersons whose full-time occupation is soliciting life insurance or annuity contracts, or both, primarily for one life insurance company.

Home Workers: This group includes, but is not limited to, people who make such things as clothing, bedding, needlecraft products or similar products for a particular business. In addition, it can also include people who provide typing or transcribing services for a business. The work must be done in accordance with specifications given by the business, the material or goods on which the work is to be done must be furnished by the business and the finished product must be returned to the business or to another designated place. The work is usually done in the worker's own home.

Traveling or City Salespersons: This category includes workers who operate away from the business's premises. Their full-time business activity is selling merchandise for a single business. They must sell to wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments, and the merchandise must be bought by the purchasers for resale or must be supplied for use in the purchaser's business. It cannot be sold at retail or to individual consumers, nor can the sales be to manufacturers, schools, churches, hospitals, or government entities.

Because statutory employees are not employees for purposes of deducting trade or business expenses, they can deduct their expenses on Schedule C of Form 1040, rather than as miscellaneous itemized deductions. Also, except for full-time life insurance salespersons, statutory employees are not treated as employees when determining eligibility for employee benefit programs.

The wages of statutory employees may be subject to social security, Medicare, FUTA and SUTA taxes. However, they are not subject to income tax withholding.

Non-employees Defined by Law

Workers defined as non-employees are treated as independent contractors. They are not subject to employment taxes.

Corporate Director (Internal Revenue Code Section 3121)

A director of a corporation in his/her capacity as director is not an employee of the corporation.

Statutory Non-employee (Internal Revenue Code Section 3508(a))

There are three types of occupations that will not be treated as employees for FICA, FUTA and income tax withholding for services performed provided they meet certain qualifications. These occupations are:

- A. **Qualified Real Estate Agent:** The individual must be a licensed real estate agent. Substantially all of such individual's remuneration for services is directly related to sales or other output rather than the number of hours worked. A written contract must exist between the individual and the person for whom services are being performed which provides that the individual will not be treated as an employee for federal tax purposes.
- B. **Direct Seller:** The individual must be engaged in the sale of consumer products in other than a permanent retail establishment. Substantially all remuneration for services is directly related to sales or other output rather than the number of hours worked. A written contract must exist between the individual and the person for whom services are being performed which provides that the individual will not be treated as an employee for federal tax purposes.
- C. **Companion Sitter:** IRC section 3506 provides that a companion sitter will not be an employee of a companion sitting placement service if the companion sitting placement service neither pays nor receives the salary or wages of the sitter. The placement service may be compensated on a fee basis by either the sitter or the person or business for which the sitting is performed.

Independent Contractor vs. Employee

Proper classification of workers can be a complex task for any business. Larger companies often employ experts who are familiar with classification guidelines and can guide the company's efforts. This expertise comes with a cost that many small or start-up businesses feel they can't afford. Unfortunately, it can become much more costly to the business owner when a government auditor or examiner converts workers from independent contractor to employee status.

Independent contractors are common in certain industries, including construction, trucking, sales, computer technologies and the performing arts. Within these industries there is a higher likelihood that businesses may misclassify their workers as independent contractors. It is not uncommon, however, to find secretaries, clerks, managers, janitors, nurses, machine operators and a multitude of other workers misclassified as independent contractors. It is also not uncommon to find employees who are performing services on a part-time, temporary or probationary basis being misclassified as independent.

The prevailing motive to consciously misclassify an employee is economic. Generally, 30 to 40 percent of an employee's gross earnings goes toward taxes and entitlements such as workers' compensation, Social Security, unemployment insurance, and varied retirement and health plans. Some businesses seek to eliminate these obligations and taxes to reduce business expenses.

There are many good government publications and tax seminars that cover employer-employee issues including the independent worker issue. *A Guide to Starting A Business in Minnesota* and *An Employer's Guide to Employment Law Issues In Minnesota*, both published by DEED, are excellent resources and references manuals for all businesses that operate in Minnesota.

An Employer's Guide to Employment Law Issues In Minnesota

A Guide to Starting a Business in Minnesota

Both publications are available on this CD, or in paper form from:

MN Small Business Assistance Office

1st National Bank Building

332 Minnesota Street, Suite E200

St. Paul, MN 55101-1351

Telephone: (651) 259-7476

Toll Free: 1-800-310-8323

Both publications are available as downloadable PDF documents, on CD, or in paper form online at:

www.positivelyminnesota.com/Data_Publications/Publications/All_Other_DEED_Publications

The IRS Common Law Control Standard Relating to Employment Relationships

In the past, the IRS used 20 Common Law Factors to determine any worker's status that did not fall into any particular statutory definition. At the 1995 White House Conference on Small Business, and at a number of IRS-sponsored town meetings with small business owners, participants identified worker classification as one of small business' major concerns. In answer to this concern, the IRS changed their approach to worker classification. The most relevant of the 20 Common Law Factors were grouped into three categories, as shown in the following table:

<p><i>Behavioral Control</i></p>	<p><i>Factors which illustrate whether there is a right to direct or control how the worker performs the task for which he or she is engaged:</i></p> <ul style="list-style-type: none"> • <i>Instructions</i> - Relating to when, where, how to accomplish the task; where to purchase necessary supplies • <i>Training</i> - As regards specific procedures to be followed, and methods to be used, in completing the task
<p><i>Financial Control</i></p>	<p><i>Factors which illustrate whether there is a right to direct or control how the business aspects of the worker's activities are conducted:</i></p> <ul style="list-style-type: none"> • <i>Significant Investment</i> - Does the worker own the standard tools and equipment of his or her trade or profession? Do they maintain a separate office and are they responsible for all expenses related thereto? • <i>Unreimbursed Expenses</i> - These would tend to indicate independence (focus on scope is important) • <i>Services Available to the Relevant Market</i> - Does worker advertise and maintain a visible business location? • <i>Method of Payment</i> - Is it a flat fee, or per-job basis? (Workers paid on an hourly, daily, weekly or monthly basis would tend to indicate an employer-employee relationship.) • <i>Opportunity for Profit or Loss</i> - The ability to sustain a loss is one of the strongest indicators of independence.
<p><i>Relationship of the Parties</i></p>	<p><i>Factors which illustrate how the parties perceive their relationship:</i></p> <ul style="list-style-type: none"> • <i>Intent of the Parties/Written Contracts</i> - Supports position of independence, but actual substance of the relationship will generally prevail as the primary indicator of independence. • <i>Employee Benefits</i> - Providing a worker with benefits is generally evidence of employee status • <i>Discharge/Termination</i> - Can the firm terminate or discharge the worker and/or can the worker leave before the task is completed without becoming liable for nonperformance under the contract or agreement? • <i>Regular Business Activity</i> - Are the services performed a key aspect of the regular business of the firm? If so, an employer-employee relationship may be indicated.

NOTE: The IRS weighs the evidence in all of these areas to ascertain whether the right to control exists on the part of the principal. In most cases there will be some facts that support a finding of independent contractor status and some facts that support a finding of an employment relationship. There is no certain number of evidentiary categories that must be met for the finding of an employment relationship to be made. Looking at the evidence as a whole, a determination will be made whether evidence of control or autonomy predominates. There must be a finding that the right to control does exist for an employment relationship to be established.

Please consult your accountant, attorney or the IRS for a more detailed explanation of these tests.

Minnesota State agencies utilize the concept of common law factor analysis similar to that used by the IRS (some states do not). Minnesota's common law factors have been defined by the Minnesota court system. Of the twenty factors the courts have defined, these five factors carry the most "weight":

1. **Control** - Does the firm or does the worker control the means and the manner in which the services are performed. This factor has been cited in many court decisions as being the most important factor.
2. **Discharge** - can either party sue for breach of contract or can the firm or worker terminate at will without incurring any legal liabilities.
3. **Payment** - does the firm or the worker dictate the value placed on these services. Is it based on by the job, or is the payment made in a regular and routine manner?
4. **Investment** - Does the firm or does the worker furnish any car or truck, tools or equipment, materials or supplies that may be necessary to perform these services.
5. **Premises** - Does the firm or does the worker control the premises where these services are performed.

If the worker is in control of these essential factors he or she would, most likely, be determined to be an independent contractor. If the firm is in control it would be determined to be employment. There are, of course, other factors in the review that would "round out" the analysis of any given work relationship.

For the Internal Revenue Service (IRS), the Minnesota Department of Revenue, Minnesota Department of Employment & Economic Development (DEED) and Minnesota Department of Labor and Industry (DOLI), persons performing services for your business can be classified as either independent contractors or employees. It is very important for you and the workers that you classify them correctly. If the worker is an independent contractor, you are not required to withhold federal or state taxes, pay social security, Medicare, federal or state unemployment taxes, or carry workers compensation on that individual. However, if the worker is an employee, all of the above are required.

Simply having a written contract designating an individual as an independent contractor does not necessarily make it so. Rather, each agency makes a determination based on the facts of each case and the law that applies to the situation. The IRS, MDOR, DEED and DOLI will each make a separate determination on the status of each class of worker in question. Since all four agencies follow similar criteria, they usually make identical decisions. However, if you plan to classify some of your workers as independent contractors, it is important to get a separate ruling from all four agencies.

Each agency makes a similar determination after gathering the facts, reviewing the records relevant to their agency and examining any existing written contracts. They then make a decision and send out a written determination to both the worker and the employing unit. Each agency has its own appeal process, which you must carefully follow if you wish to protest the initial decision.

Unique Treatment of Workers in the Construction Industry in MN

Independent contractors doing commercial or residential building construction or improvements in the public or private sector are employees unless all of the following criteria are met:

1. The independent contractor maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;
2. The independent contractor holds or has applied for a federal employer identification number (FEIN); or has filed business or self-employment income tax returns with the Federal Internal Revenue Service based on that work or service in the previous year;
3. The independent contractor operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;
4. The independent contractor incurs the main expenses related to the service or work that the independent contractor performs under contract;
5. The independent contractor is responsible for the satisfactory completion of work or services that the independent contractor contract to perform and is liable for a failure to complete the work or service;
6. The independent contractor receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
7. The independent contractor may realize a profit or suffer a loss under contracts to perform work or service;
8. The independent contractor has continuing or recurring business liabilities or obligations; and
9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

If any (all) of the above criteria are not met, the independent contractor will be considered an employee and employment taxes will be assessed.

A statement that all of the above criteria are met is not sufficient. **You will need to be able to provide actual documentation that the criteria are being met.**

Also see: “**Independent Contractor Exemption Certificate**” available online at:

www.dli.mn.gov/CCLD/ICEC.asp

NOTE: IRS, MDOR, DEED and DOLI do share information, so if one agency audits your records and changes the status of a class of workers from “independent” to “employee,” the other agency will probably contact you regarding the same class of workers. A reclassification can cost you a great deal in back taxes, so it is important to check with each agency before you decide to classify workers as independent contractors.

Opinions and Determinations

For the official worker status determination, contact UIMN:

Website: www.uimn.org

E-mail: ui.mn@state.mn.us

MN Unemployment Insurance Program

1st National Bank Building

332 Minnesota Street, Suite E200

St. Paul, MN 55101-1351

For a worker status opinion, please call (651) 259-7220.

Also see IRS Publications 1976 and 1779 for Employment Factors and MDOR Fact Sheet 18 for construction independent contractor 2% withholding requirements (included in Appendix).

Paying Non-Employee Compensation

Payee's Taxpayer Identification Number

You will need to get your payee's correct Taxpayer Identification Number (TIN). You can use IRS **Form W-9**, Request for Taxpayer Identification Number and Certification, to request the TIN.

Backup Withholding

If your payee does not provide you with a TIN, you must withhold 28 percent (28%) of his or her pay for federal tax purposes and 7.85 percent (.0785) for state tax purposes. This is called backup withholding. You may also have to do this for other reasons if the IRS asks you to. Federal backup withholding amounts are reported annually on IRS **Form 945**, Annual Return of Withholding Federal Income Tax. State backup withholding amounts are reported with your regular state withholding. Non-employees may be subject to other forms of state withholding. Please see the section *Withholding State Income Tax*.

Form 1099-MISC, Miscellaneous Income

Payments that must be reported on Form 1099-MISC as non-employee compensation include fees, commissions, prizes, awards, or other forms of compensation for services rendered for your trade or business by an individual who is not your employee.

If the following four conditions are met, a payment is generally reported as non-employee compensation. You made:

- payment to a non-employee,
- payment for services rendered in your trade or business, including government agencies and nonprofit organizations,
- payment to a payee who is not a corporation (if the payment is to a corporation, see the instructions for Form 1099),
- payments to the payee totaling \$600 or more during the year. (Total payments include payments for parts or materials used by the payee in rendering services.)

The Form 1099-MISC is due to the recipient by January 31 and due to the IRS by February 28. If you file paper forms, transmit them to the IRS using Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

If you withheld Minnesota taxes, you will need to send a copy of the 1099 to the Minnesota Department of Revenue. Send the 1099 with your W-2s to Minnesota Department of Revenue by February 28.

If you use other types of 1099 forms, you must use a separate Form 1096 for each type of 1099 form. (For example, a bank might use a 1099-INT and 1099-MISC. The 1099-INT is used for interest paid to its customers and a 1099-MISC is used for an independent contractor the bank has engaged.) Send Form 1096 and the appropriate information returns to your Internal Revenue Service Center, use the address shown for your state in the 1099 MISC instruction.

For further federal information, see Publication 15, Employer's Tax Guide, and the instructions for Forms 1099, 1098, 5498, and W-2G. For further state information, see the Minnesota Income Tax Withholding Instructions and Tax Tables.

Internal Revenue Service

Registering For a Federal Employer ID Number

Form SS-4, Application for Employer Identification Number

Every partnership, corporation (including S corporations), and certain sole proprietors must have an Employer Identification Number (EIN). The EIN is a nine digit number the IRS issues. The digits are arranged as follows: 00-0000000. It is used to identify the tax accounts of employers and certain others that have no employees. Use your EIN on all the items you send to the IRS and SSA.

If you have not asked for an EIN, request one on-line, go to our website www.irs.gov/businesses and click on Employee ID numbers. If you do not have access to the Internet, complete **Form SS-4**, Application for Employer Identification Number or you may apply by toll-free telephone, 1-800-829-4933. Calls should be made Monday through Friday from 7:00 a.m. to 10:00 p.m., local time. Minnesota taxpayers may fax their EIN request to Philadelphia, PA (859) 669-5760. You may mail your completed Form SS-4 to the address in the instructions.

Federal Forms Filled Out by Employees

Form I-9, Employment Eligibility Verification

The federal Immigration and Nationality Act (PL 99-603) requires employers to verify that all persons they hire are legally authorized to work in the United States. The law prohibits employers from knowingly hiring or continuing to employ persons not authorized to work in the United States. This law applies to all employers, regardless of the number of employees they have and to all individuals hired after November 6, 1986.

Form I-9, Employment Eligibility Verification Form, is used to verify employment. This form is available from the United States Citizenship and Immigration Services, USCIS.

If you are an employer, the law requires that you must ensure that every employee completes Section 1 of Form I-9 when they begin working. They must also properly complete Section 2 of the form within three days of hire. This law also requires you to review documents establishing the employee's identity and work eligibility. The documents that satisfy the verification requirements are listed on federal Form I-9.

If you are a sole proprietor without employees, you don't need to complete Form I-9. However, if you are an employee of your own company, you have to fill out Form I-9 for yourself. For example, if your company is a corporation, partnership or limited liability company, and you are on the payroll, you are considered an employee and must fill out the form.

As an employer, you must keep I-9 verification forms on file for three years from the date of hire or for one year following the employee's separation from service, whichever is later. The forms may be inspected by the United States Citizenship and Immigration Services, USCIS, the United States Department of Labor, and the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Sanctions for failing to comply with this law includes:

- warnings,
- cease and desist orders, and
- civil penalties ranging from \$100 to \$10,000 per violation.

Total fines may exceed these amounts. Criminal penalties may be imposed for a pattern and practice of violations.

The Immigration Reform and Control Act (IRCA) and Title VII of the Civil Rights Act of 1964 prohibit employment discrimination.

If you have four or more employees, you may not discriminate in:

- hiring,
- firing,
- recruitment, or
- referral for a fee of employees on the basis of the employee's national origin or citizenship status.

In practice, this means that you must treat all employees the same when completing Form I-9.

As an employer, you cannot:

- set different employment eligibility verification standards or require that different documents be presented by different groups of employees.
- choose which documents they want to present from the list of acceptable documents.
- request that an employee require more or different documents or refuse to honor documents, which on their face reasonably appear to be genuine and to relate to the person presenting them.
- refuse to accept a document or refuse to hire an individual, because a document has a future expiration date.

To minimize discrimination charges, you are encouraged to make hiring decisions irrespective of applicants' national origin or citizenship status when they are authorized to work in the United States. Questions like "What is your national origin?" and "Are you a United States citizen?" may be considered discriminatory.

It is permissible, however, to ask whether an applicant is legally authorized to work in this country.

Detailed information on the requirements of this law is provided in Publication M-274, Handbook for Employers with Instructions for Completing Form I-9.

This material may be obtained from the United States Citizenship and Immigration Services, USCIS at the address and telephone number provided below.

United States Citizenship and Immigration Services
Attn: Employer Relations Officer
2901 Metro Drive, Suite 100
Bloomington, MN 55425

1-800-870-3676— forms order
1-800-375-5283— questions

Form W-4, Employee's Withholding Allowance Certificate

To know how much income tax to withhold from employees' wages, you should have a **Form W-4, Employee's Withholding Allowance Certificate** on file for each employee. Ask all new employees to give you a completed Form W-4 when they start work. Make the form effective with the first pay date. If a new employee does not give you a completed Form W-4, assume he or she is single, with zero withholding allowances. A Form W-4 remains in effect until the employee submits a new one. However, employees who claim exempt must complete a new Form W-4 each year by February 15. For the effective date of a replacement Form W-4, see IRS Publication 15.

For further information about Form W-4, see **Publication 15**, Circular E, Employer's Tax Guide.

NOTE: Form W-4 can be used for the purpose of New Hire Reporting. You must complete boxes 8 and 10 on the Form W-4. For more information, see the New Hire Reporting section under Minnesota Department of Human Services.

Form W-5, Earned Income Credit Advance Payment Certificate

Employees who are eligible for the Earned Income Credit (EIC) and who have a qualifying child living with them may receive advance EIC payments with their pay during the year. Employees who want to get advance EIC payments must give you a completed **Form W-5**, Earned Income Credit Advance Payment Certificate. Eligibility requirements are shown on Form W-5. Each pay date you are then required to make advance EIC payments to employees who have given you Form W-5.

On Form W-5, an employee states that he or she expects to be eligible for the EIC and indicates whether they have a certificate in effect with any other current employer. The employee also shows:

- whether he or she has a qualifying child
- whether he or she is married, and if married, whether their spouse has a certificate in effect with another employer.

Form W-5 remains in effect until the end of the calendar year, unless the employee revokes the certificate or files another one. Eligible employees must file a new certificate each year.

Make the initial certificate effective for the first pay period ending (or the first wage payment made without regard to a pay period) on or after the date the employee gives you the form.

Figure the amount of advance EIC to include in the employee's pay by using the advance EIC tables in federal Publication 15. Generally, an advance EIC payment is not wages and is not subject to withholding of income, Social Security, or Medicare taxes. An advance EIC payment does not change the amount of income, Social Security, or Medicare taxes you withhold from the employee's wages.

You add the EIC payment to the employee's net pay for the pay period. At the end of the year, you show the total advance EIC payments in box 9 "Advance EIC payment" of the Form W-2. Do not include this amount in box 1 "Wages, tips, other compensation."

Generally, employers will make the advance EIC payment from withheld income tax and employee and employer Social Security and Medicare taxes.

NOTE: Employees who qualify for the federal EIC also qualify for the Minnesota working family credit. However, there are no advance payments. Employees claim the credit when they file their Minnesota income tax return.

Withholding Federal Taxes

Each time you pay your employees you must withhold (deduct) part of their pay. The tax you withhold is the employee's share of income tax and social security and Medicare taxes (FICA).

The amount you withhold for federal income tax is based on the employee's W-4. See Publication 15 to determine how much federal income tax to withhold.

Social security and Medicare taxes are levied on both you and your employee. You, as an employer, must withhold the employee's part of the taxes, and you must pay a matching amount. For wages paid in 2009, the social security tax rate is 6.2 percent and is withheld and paid until the employee's wage base exceeds \$ 106,800. The Medicare tax rate is 1.45 percent. There is no wage base for Medicare.

Depositing Federal Taxes

Form 8109, Federal Tax Deposit (FTD) Coupon

In general, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes (minus any advanced EIC payments) by mailing or delivering a check, money order, or cash to an authorized financial institution or Federal Reserve bank. You will use **Form 8109**, Federal Tax Deposit (FTD) Coupon to make the deposits.

There are two deposit schedules - monthly or semi-weekly - for determining when you deposit social security and Medicare taxes and withheld income tax. These schedules tell you when a deposit is due after a tax liability arises (e.g., when you have a payday). Prior to the beginning of each calendar year, you must determine which of the two deposit schedules you are required to use. The deposit schedule you must use is based on the total tax liability you reported on Form 941 during a four-quarter ***lookback period***. The lookback period begins July 1 and ends June 30. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

Under the monthly deposit schedule, deposit Form 941 taxes on payments made during a month by the 15th day of the following month.

Under the semiweekly deposit schedule, deposit Form 941 taxes on payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. You must deposit amounts accumulated on payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday.

NOTE: During the first calendar year of your business, your tax liability for each quarter in the lookback period is considered to be zero. Therefore, you are a monthly schedule depositor for the first calendar year of your business, unless you meet one of the specific deposit exceptions defined in Circular E.

NOTE: Do not use the deposit coupons to pay delinquent taxes assessed by the IRS. These payments should be sent directly to the IRS with a copy of any related notice the IRS sent you.

Making deposits with FTD coupons

If you are not making deposits by EFTPS use form 8109. Federal Tax Deposit Coupon, to make the deposits at an authorized financial institution.

For **new employers**, if you would like to receive a Federal Tax Deposit (FTD) coupon booklet, call 1-800-829-4933. Allow 5 to 6 weeks for delivery. Consider activating your enrollment in EFTPS now so that you can make timely deposits of payroll taxes while waiting for requested FTD coupons.

The IRS will keep track of the number of FTD coupons that you use and automatically send additional coupons when needed. If you do not receive your supply of FTD coupons, call 1-800-829-4933. You can have the FTD coupon books sent to a branch office, tax preparer, or service bureau that is making your deposits by showing the address on Form 8109-C, FTD Address Change, which is in the FTD coupon book. (Filing Form 8109-C will not change your address of record; it will change only the address where the FTD coupons are mailed.) The FTD coupons will be preprinted with your name, address, and EIN. They have entry boxes for indicating the type of tax and the tax period for which the deposit is made.

It is very important to clearly mark the correct type of tax and tax period on each FTD coupon. This information is used by the IRS to credit your account.

If you have branch offices depositing taxes, give them FTD coupons and complete instructions so that they can deposit the taxes when due.

Please use only **your** FTD coupons. If you use anyone else's FTD coupon, you may be subject to a failure to deposit penalty. This is because your account will be underpaid by the amount of the deposit credited to the other person's account.

Electronic Federal Tax Payment System (EFTPS)

Every day more businesses discover the convenience of paying their taxes electronically through the Electronic Federal Tax Payment System (EFTPS). With EFTPS, you can pay your federal taxes from the convenience of your office or home.

EFTPS is a fast, easy, and convenient way to initiate your Federal Tax Deposits electronically through a simple telephone call or using a personal computer. You do not need any new equipment to use EFTPS, and you eliminate the need for paper Federal Tax Deposit coupons, writing checks, and trips to the bank.

The bank functions as Treasury Financial Agent to enroll taxpayers in EFTPS, provide customer service, direct payments in a timely manner to the government account, and provide tax payment information to the IRS to update taxpayers' tax accounts. You do not have to open an account with either of the Treasury-contracted banks to use EFTPS. Through EFTPS, taxpayers authorize either their own bank or the bank serving as Treasury's Financial Agent to initiate payments on their behalf from the taxpayers' bank accounts to the government account. The Treasury Financial Agents will send the taxpayer Windows-based software if requested. First you need to enroll in EFTPS by submitting an enrollment form. Once you receive your payment instructions and PIN, you can begin to make tax payments. The application process normally takes several weeks.

Need more information? Visit EFTPS home page, www.eftps.gov, to enroll online, make payments, online help for payments and account history and customer service.

Filing Federal Tax Returns

Form 941, Employer's Quarterly Federal Tax Return

Generally, all businesses subject to income tax withholding or social security and Medicare taxes must file Form 941, Employer's Quarterly Federal Tax Return.

However, the following are some exceptions:

- Agricultural employers use Form 943, Employer's Annual Tax Return for Agricultural Employees.
- Income tax withholding on non-payroll items and backup withholding must be reported on Form 945, Annual Return of Withheld Income Tax.
- Annual filing of employment tax of \$1000 or less of tax or \$4000 of wages reported on Form 944.

Form 941 is due on or before April 30, July 31, October 31 and January 31.

Form 944. If you receive written notification that you qualify for the Form 944 program, you must file Form 944, Employer's Annual Federal Tax Return, instead of Form 941. If you received this notification, but prefer to file Form 941, you can request to have your filing requirement changed for Form 941, if you satisfy certain requirements. See the instructions for Form 944 for details. Employers who must file Form 944 have until the last day of the month that follows the end of the year to file Form 944. Form 944 is due on January 31.

Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return

The Federal Unemployment Tax Act (FUTA), along with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. Most employers pay both a Federal and a state unemployment tax.

NOTE: Only the employer pays FUTA tax; it is not deducted from employee's wages.

Use the following three tests to determine whether you must pay FUTA tax. Each test applies to a different category of employee, and each is independent of the others. If a test describes your situation, you are subject to FUTA tax on the wages you pay to employees in that category during the current calendar year.

Test 1. In general. You are subject to FUTA tax on the wages you pay employees who are not farm workers or household workers if in the current or preceding calendar year:

- a. The wages you paid to employees in this category totaled \$1,500 or more in any calendar quarter, or
- b. In each of 20 different calendar weeks, there was at least a part of a day in which you had an employee in this category. The 20 weeks do not have to be consecutive. Nor does it have to be the same employee each week. Individuals on sick leave or vacation are counted as employees.

Test 2. Household workers. You are subject to FUTA tax on the cash wages you pay to household workers if the wages totaled \$1,000 or more in any calendar quarter of the current or preceding year. A household worker is an employee who performs domestic services in a private home, local college club, or local fraternity or sorority chapter.

Test 3. Farm workers. You are subject to FUTA tax on the wages you pay to farm workers if in the current or preceding calendar year:

- a. Total cash wages you paid for the farm labor were \$20,000 or more in any calendar quarter, or
- b. In each of 20 different calendar weeks in the current or preceding calendar year, there was at least 1 day in which you had 10 or more farm worker employees. The 20 weeks do not have to be consecutive. Nor does it have to be the same 10 employees each week. Nor do all 10 employees have to work a full day or the same part of the day. Individuals on sick leave or vacation are counted as employees.

Computing FUTA Tax

The FUTA tax rate is 6.2%. The tax applies to the first \$7,000 you pay each employee as wages during the year. Generally, you can take a credit against your FUTA tax for amounts you paid into state unemployment funds. This credit cannot be more than 5.4% of taxable wages. If you are entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.8%. Determine your FUTA tax liability by multiplying the amount of wages paid during the quarter by 0.8%. (Stop computing FUTA tax on an employee's wages when he or she reaches \$7,000 in wages.)

Depositing FUTA Taxes

For deposit purposes, figure FUTA tax quarterly. If your FUTA tax liability for a quarter is \$500 or less, you do not have to deposit the tax. Instead, you may carry it forward and add it to the liability figured in the next quarter to see if you must make a deposit. If your FUTA tax liability for any calendar quarter is over \$500 (including any amount carried forward from an earlier quarter), you must deposit the tax. Use **Form 8109**, Federal Tax Deposit Coupon or the EFTPS System. Do not use the same coupon that was used to deposit the 941 taxes. Deposit the FUTA tax by the last day of the first month after the quarter ends, if elected out of EFTPS.

Reporting FUTA Taxes

Use Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return to report this tax.

The IRS will mail you a preaddressed Form 940 if you filed a return the year before. If you do not receive Form 940, you can order the form by calling the IRS at 1-800-829-3676.

Form 940 is due by January 31 each year.

Minnesota Department of Revenue

Registering for a Department of Revenue ID Number

Form ABR, Application for Business Registration

You need a MDOR tax ID number if you:

- Make taxable sales or leases;
- Perform taxable services in Minnesota;
- Withhold Minnesota income taxes from employees' wages;
- Make estimated business tax payments;
- File a Minnesota corporation franchise, S corporation or partnership tax return;
- File or pay MinnesotaCare taxes or special taxes, such as alcohol, tobacco or insurance premium taxes;
- File fiduciary income tax returns as an estate, trust or personal representative;
- Are a vendor of goods or services to a state government agency or a business receiving payments from a state agency;
- Have use tax to report (read Sales Tax Fact Sheet 146 and Sales Tax Fact Sheet 156 for details); or
- Have solid waste management (SWM) taxes to report (first, register for sales and use tax online; then, call our office to register for SWM taxes).

To register for a Minnesota tax ID number and withhold Minnesota income tax, go to our website at www.taxes.state.mn.us and click "Register for a Minnesota tax ID number" on the e-Services menu. If you don't have Internet access, call our Registration Services office, (651) 282-5225, or fill out **Form ABR**, Application for Business Registration. If you already have a MDOR tax ID number for other MDOR taxes (such as sales tax), you can use the same number for withholding tax. Go to our website and click "Update business info" on the e-Services menu. You'll be able to update your account for withholding using our e-File Minnesota system.

After you register, we'll send you a letter confirming your Minnesota tax ID number and a 6 digit temporary password.

Report Business Changes

If you change the name, address or ownership of your business, close your business, or no longer have employees go to our website and click "Update business info" on the e-Services menu. You'll be able to update your account for withholding using our e-File Minnesota system.

Forms Filled Out by Employees

Form W-4, Employee's Withholding Allowance Certificate

To determine the amount of income tax to withhold from employees' wages, you must have **Form W-4, Employee's Withholding Allowance Certificate** on file for each employee. Ask all employees to complete Form W-4 when they begin working. If an employee does not return a completed form to you, withhold tax as if the employee is single with no allowances. A Form W-4 remains in effect until the employee submits a new one. However, employees who claim exempt must complete a new Form W-4 each year by February 15. For the effective date of a replacement Form W-4, see IRS Publication 15.

Minnesota withholding allowances

Employees may claim up to, but not more than, the number of federal allowances they claim. If employees choose the same number of federal as Minnesota withholding allowances, have them fill out one W-4. If employees claim fewer Minnesota withholding allowances than federal allowances, have them fill out a second W-4 to list the Minnesota allowances. Write "Minnesota Only" across the top of the form.

When to send in copies of Form W-4

You need to keep the W-4s for your records. However, copies of the W-4s need to be sent to the Minnesota Department of Revenue if:

- an employee claims ***more than 10*** withholding allowances;
- an employee claims to be exempt from Minnesota withholding and you reasonably expect the wages to exceed \$200 per week unless he or she has completed form MW-R, Reciprocity Exemption Affidavit of Residency; or
- you believe an employee is not entitled to the number of allowances he or she claimed.

Honor properly completed W-4s unless the Minnesota Department of Revenue instructs you otherwise.

If the above conditions apply, send copies of Form W-4 received during the quarter from employees still employed by you at the end of the quarter.

As the employer, you must complete boxes 8 and 10 on any Form W-4 you send in.

Send required W-4 copies to: MN Department of Revenue
Mail Station 6501
St. Paul, MN 55146-6501

For further information about Form W-4, see the Minnesota Income Tax Withholding Instructions and Tax Tables.

Form MW-R, Reciprocity Exemption/Affidavit of Residency

As an employer in Minnesota, you are required, in most cases, to withhold Minnesota income taxes from your employees' wages. An exception occurs when an employee documents that he or she is covered by a state reciprocity agreement.

Minnesota has reciprocity agreements with Michigan and North Dakota. *However, employees who work in Minnesota, but are residents of these states **are** required to have Minnesota income tax withheld **from their wages** unless they have filed a current Form MW-R with their employer.*

If a North Dakota or Michigan resident does not want you to withhold Minnesota income tax, they must complete **Form MW-R, Reciprocity Exemption from Minnesota Withholding/Affidavit of Residency**. Employees must give this form to their employers each year by the end of February in order to be eligible for the exemption. An employer must file copies of MW-R with the Department of Revenue by March 31 each year, or within 30 days after receiving Form MW-R from the employee, whichever is later.

If you employ a North Dakota or Michigan resident or a resident of any other state, you may be required to withhold taxes for the state of residence. Contact the revenue agency in the employee's state of residence for more information.

You can obtain Form MW-R by downloading the form from our website www.taxes.state.mn.us, click "Withholding Tax" on the "Tax Information" menu, then on "Forms and Instructions" on the Withholding Tax page, and scroll down to MW-R. You can also call (651) 282-9999 in the Metro area, 1-800-657-3594 in Greater Minnesota, or 711 for Minnesota Relay Service to get a copy mailed to you.

Withholding State Income Tax

If you employ anyone who works in Minnesota or a Minnesota resident, and you are required to withhold federal income tax from the employee's wages, in most cases you are also required to withhold Minnesota income tax. If you are not required to withhold federal income tax from the employee's wages, in most cases you are not required to withhold Minnesota income tax.

There are some important *exceptions* to these rules.

- **Residents of North Dakota or Michigan.** Employees who are residents of North Dakota or Michigan and work in Minnesota are **not** required to have Minnesota income tax withheld from their wages if they properly complete Form MW-R, Reciprocity Exemption/Affidavit of Residency.
- **Pensions and annuities.** Employers, insurance companies, etc. cannot withhold Minnesota income tax from pensions and annuity payments unless they are asked to do so by the person receiving the payment.
- **Interstate carrier companies.** If you operate an interstate carrier company and have employees such as truck drivers, bus drivers or railroad workers who regularly perform assigned duties in two or more states, withhold state income tax for the employee's state of residence only.
- **Interstate air carrier companies.** If you operate an interstate air carrier company and have employees who perform duties in more than one state, withhold state income tax for the employee's state of residence as well as any state in which more than 50 percent of their compensation is earned.
- **Royalty payments.** The payer of mining and exploration royalties is required to withhold income tax on royalty payments made for use of Minnesota land. The withholding rate is 6.25% (.0625) of the royalties paid during the year.
- **Nonresident entertainer tax.** Compensation that nonresident entertainers receive for performances in Minnesota is not assigned to Minnesota for regular income tax purposes. Instead, there is a 2 percent (.02) nonresident entertainer tax on the *gross* compensation the entertainment entity receives for performances in Minnesota. For more information, order Withholding Fact Sheet #11, Nonresident Entertainer Tax or call (651) 282-9999 in the Metro area, 1-800-657-3594 in Greater Minnesota, or 711 for Minnesota Relay Service.
- **Surety deposits.** The law requires eight percent (.08) of cumulative calendar year payments made to out of state contractors be withheld as a surety deposits to the contractor which exceed \$50,000 for work done in Minnesota. The eight percent payment is deposited with the Department of Revenue to ensure the contractor's obligations to the State of Minnesota are met for withholding, sales and use, franchise and income taxes. For more information, download Withholding Fact Sheet #12, Surety Deposits for Out of State Construction Contractors. You can also call 651-282-9999, in the Metro area, 1-800-657-3594 in Greater Minnesota, or 711 for Minnesota Relay Service, to get a copy mailed to you.
- **IC134 Withholding Affidavit for Contractors.** If a contractor enters into a construction contract with a state agency or any of its subdivisions (city, county, school district, etc.) for

work in Minnesota, they must complete form IC134. Go to www.taxes.state.mn.us and click on Submit Contractor Affidavit listed under the e-services, Businesses menu, or mail a paper IC134 to:

Minnesota Department of Revenue
Withholding Tax Division
Mail Station 6610
St. Paul, MN 55146-6610

Depositing State Income Tax Withholding

Generally, you are required to deposit your Minnesota withholding tax when you are required to deposit your federal withholding tax. There are three exceptions to this rule:

- If you withheld *\$1500 or less* in Minnesota in the previous quarter, you may send the entire Minnesota tax withheld for the current quarter by the last day of the next month after the end of the quarter (i.e. with the quarterly return).
- Minnesota did not adopt the federal “one-day rule” for federal liabilities over \$100,000. If you are required to deposit your federal tax the next day, deposit the Minnesota tax withheld at the same time it would have been required to be deposited if you had not exceeded the federal limit of \$100,000.
- If the Minnesota Department of Revenue has notified you that you are an annual filer, you only need to make a deposit when your Minnesota withholding exceeds \$500. Deposits are due the last day of the month following the month in which you exceeded \$500.

There are two ways to deposit your Minnesota income tax withholding.

1. Electronically (EFT) – Electronic funds transfer (EFT) is an easy way to *pay* your taxes electronically and a good method of payment since you are required to *file* electronically. It is free of charge if you choose to use the ACH Debit Method. You can initiate an ACH debit transaction without pre-registration. Some businesses are required by law to pay taxes by EFT. If your business is required, you will be notified. If you are not required to pay by EFT but would enjoy the convenience of paying electronically, you can do this by going to our website at www.taxes.state.mn.us then to the eServices menu and click on “**Login to e-File Minnesota**” enter your 7 digit Minnesota ID number, click Continue, then follow the prompts to make payment. You can also call your payment in by using our touch tone phone system, 1-800-570-3329.

If you are making deposit electronically by Internet or touch-tone telephone, have this information ready:

- Your 7 digit Minnesota tax identification number
- For first time users, you will be prompted to create a password. Create your own personal password consisting of 4 to 8 characters, with no spaces, and at least one of the characters must be a letter. You can use letters or numbers but there must be at least one letter. Do not use punctuation or any special characters such as “, /, -, #, etc. The system is case sensitive. If you have already established a password because you filed or paid another tax type on e-File, enter the password you have established.
- Your 9 digit bank routing number, and
- Your bank account number.

2. By mail - Mail your customized **Form MW5**, Withholding Tax Deposit Form, with your deposit. Mail it to the address on the form. You are only required to do this if you are **not paying electronically**.

Note: Do not deposit your state withholding tax at your bank. Electronically deposit or mail your deposit to the Minnesota Department of Revenue.

Filing Department of Revenue Tax Returns

Quarterly Withholding Tax Return

At the end of the quarter, every employer (except those notified by the Minnesota Department of Revenue that they are eligible for annual filing) must file a Withholding Tax Return, even if:

- all the tax withheld has been deposited,
- no tax was withheld during the quarter.

The first **three** quarterly returns are due April 30, July 31, and October 31, respectively. The combined **fourth-quarter/year-end return** is due February 28.

There are two ways to file; by (1) Internet or by (2) touch-tone telephone.

By Internet - You'll need Internet access with at least Internet Explorer 5.5, Netscape 7.0 or a compatible browser. You can file your return or pay your tax 24 hours a day. Go to www.taxes.state.mn.us and click "**Login to e-File Minnesota**" on the **e-Services** menu.

For Step by Step instructions, download **Fact Sheet 14** from our website. Go to www.taxes.state.mn.us and click on Withholding tax, then Fact sheets under "Tax information", or call (651) 282-9999 in the Metro area, 1-800-657-3594 in Greater Minnesota, or 711 for Minnesota Relay Service, to request one to be mailed to you.

State copies of W-2s, 1099s and other information returns

Form W-2, Wage and Tax Statement

At the end of the calendar year, fill out federal **Form W-2**, Wage and Tax Statement, for each employee to whom you paid wages during the year. You must give the W-2 forms to your employees by January 31. If an employee stops working for you before the end of the calendar year and requests in writing that the W-2 be provided before the January 31 deadline, you must provide it within 30 days after you receive the request.

Each W-2 form has spaces to list the state tax information. Write “MN” in the “State” box, your seven digit Minnesota tax ID number in the “Employer’s state ID no.” box, the amount of income earned in Minnesota in the “State wages, tips, etc.” box, and the amount of Minnesota tax withheld in the “State income tax” box.

Form W-2c

If you made an error on a W-2 you’ve already given an employee, give the employee a corrected form. Use federal **Form W-2c** for corrections. Mail state copies of Form W-2c to MN Dept. of Revenue, Mail Station 6501, St. Paul, and MN 55146-6501. If the corrections change the tax reported on the fourth-quarter/year-end return, you must file an amended return. See the current Minnesota Income Tax Withholding Instructions and Tax Tables booklet for more information.

Form 1099 and other information returns

Follow the federal requirements to issue 1099s and other information returns (1098, W-2G, etc.) to persons to whom you made payments (other than wages) during the year. Write “MN” in the “State” space, and fill in the amount of Minnesota income tax withheld, if any for that payee during the year.

Sending W-2s and 1099s to the Department of Revenue

If you are required to submit W-2s electronically to the federal Social Security Administration, you must also submit them electronically to Minnesota.

How to submit W-2s and 1099s electronically to the Minnesota Department of Revenue

Employers with access to the Internet should submit their W-2s electronically. If you are required to electronically submit your W-2s to the Social Security Administration, you are also required to submit them electronically to us. Minnesota will no longer accept W-2s on diskette or CD-ROM. We continue to accept 1099s on diskette or CD-ROM.

Due to a recent law change, the electronic filing thresholds for Form W-2 will decrease over the next few years.

You must file:

- tax year 2009 W-2s electronically if you have more than 50 forms,
- tax year 2010 W-2s electronically if you have more than 25 forms, and
- tax year 2011, and beyond, W-2s electronically if you have more than 10 forms.

While we encourage everyone to try submitting their W-2s and 1099s electronically however, if you are below the electronic submission threshold stated above for W-2s, the option to submit them on paper is still available.

Mail paper forms to:

Minnesota Revenue,
Mail Station 1173,
St. Paul, MN 55146-1173

For more information on submitting W-2s/1099s electronically, see Fact Sheet 2 and Fact Sheet 2a on our website (www.taxes.state.mn.us) or call us at (651) 282-9999 in the Metro area, 1-800-657-3594 in Greater Minnesota, or 711 for Minnesota Relay Service to request a copy.

Minnesota Department of Employment and Economic Development – Minnesota Unemployment Insurance Program

The State Unemployment Tax Act (SUTA)

The State Unemployment Tax Act (SUTA) provides Unemployment Insurance (UI) Benefits to workers who have lost their jobs. Most employers pay both a state and a federal unemployment tax.

NOTE: Only the employer pays this tax. It is not to be deducted from the employee's wages.

Who Needs to Register ?

Reference: [Minnesota Law, §268.042 Subd.1 \(2009\)](#)

Under Minnesota Unemployment Insurance Law, every individual or organization that pays wages to employees in covered employment in Minnesota must register with the Minnesota Unemployment Insurance Program (UIMN). Registration should be done as soon as possible after first wages are paid for covered employment in Minnesota. Registration must occur prior to the due date of the first quarterly wage detail report the employer is required to submit. Please do not register until covered wages have been paid.

All employers must comply with federal and state registration requirements before registering for a Minnesota Unemployment Insurance Employer Account.

Covered Employment

Covered employment is when an employee performs a service for a person or organization in return for compensation in the form of covered wages. Wages paid to employees in covered employment are used as a basis in establishing an unemployment insurance benefit account, if an employee becomes unemployed by no fault of their own.

Covered employment includes, but is not limited* to:

- Services performed by an individual who is an employee under the law of employer-employee,
- Services performed by an officer of a corporation who owns less than 25 percent of the corporation, and
- Services performed in the employ of any agency, instrumentality or political subdivision of Minnesota.
- Employers with covered employment are required to pay state unemployment insurance tax on the taxable wages paid to employees or reimburse unemployment insurance benefits collected by former employees.

*For a complete listing of covered employment, see: [Minnesota Law, §268.035 Subd.12 \(2009\)](#)

An employer is covered (begins liability) when it becomes subject to the Law for payment of state unemployment tax or reimbursement of Unemployment Insurance Benefits.

A covered employer must file quarterly reports with UIMN, listing wages paid to employees. The reported wages are used to determine entitlement if an individual applies for Unemployment Insurance Benefits.

Covered Agricultural Employer

Agricultural employment is service performed on a farm in connection with cultivating the soil or in raising or harvesting an agricultural or horticultural commodity. A farm is land or buildings used primarily for raising agricultural or horticultural commodities or as part of a ranch, range, livestock or dairy operation. Feedlots, hatcheries and horse breeding and training enterprises are not farms. An agricultural employer that has a payroll of \$20,000 or more in a calendar quarter or employs ten or more workers during 20 weeks in a calendar year is liable under FUTA. An employer who is liable under FUTA is also covered under the Minnesota Employment and Economic Development Law and must report all wages or salaries paid to all officers, shareholders, and other employees.

For agricultural employers who are not subject to FUTA, the following services are excluded from coverage: Services of family farm corporate officers; Agricultural services performed by persons sixteen years of age and under; and Services of shareholders of a family farm corporation. Excluding these services, an employer who pays a total of \$20,000 or more in cash and non-cash wages to agricultural workers in any calendar quarter or has four or more employees in agricultural employment during 20 weeks in a calendar year is covered under Minnesota Unemployment Insurance Law. Members of a crew furnished by a crew leader to perform agricultural labor for any person will be treated as employees of the crew leader under certain conditions.

Determining Minnesota Unemployment Insurance Reporting Liability

An entity that conducts business in Minnesota is required to register with UIMN via its self-service unemployment insurance reporting system after the payment of wages to employees in Minnesota, and not later than the due date of the first quarterly wage detail report. Based on information provided by the entity, UIMN will determine the entity's liability to report wages paid to its employees and pay Minnesota Unemployment Insurance taxes or (if eligible) reimburse unemployment insurance benefits that were paid to the entity's former employees.

Determining Succession

A firm that buys a business or otherwise acquires the assets or any part of an existing business that is subject to the Minnesota Unemployment Insurance Law must, at the time of the acquisition, report the acquisition to UIMN via its self-service unemployment insurance reporting system. An individual or organization that acquires all or part of the organization, trade or business or any part of the assets of a Minnesota employer may be held jointly and severally liable for any unpaid tax, interest and penalties due and not paid by the predecessor employer, in an amount not to exceed the reasonable value of that part of the organization, trade, business or assets acquired.

An organization that plans to acquire any part of an existing business can obtain information on the predecessor's account by filing a written release from the predecessor with UIMN. An organization that acquires assets in the normal course of the seller's business is not, solely by reason of the acquisition, subject to this provision of the law.

How Much Tax ?

By statute, each new employer must pay tax equal to the state's average cost rate (plus any special assessments and the Workforce Development Fee – discussed separately below) unless the business was acquired from a liable predecessor and the new employer is eligible to have an experience rate computed based on all or part of the predecessor's experience record. Employers in high experience rating industries are assigned a separate benefit cost rate. High experience rating industries include (but are not limited to) residential, commercial or industrial construction; sand, gravel, or limestone mining; manufacturing of concrete, concrete products or asphalt; and road building, repair or resurfacing, including residential and commercial driveways and parking lots. The state's average cost rate is based on the total of all benefits paid to all Minnesota UI Benefit applicants and on all wages reported that were subject to UI tax within the computation period. The average cost rate cannot be less than 1.00 percent plus the minimum tax rate. New employers in high experience rating industries are assigned a separate tax rate. The tax rate for new employers in these industries is 8.00 percent, plus the minimum tax rate (the current minimum "experience rate" assessed against existing employers under the experience rating plan - i.e., a minimum rate of one-tenth of one percent to five-tenths of one percent; see the discussion immediately below in the paragraph beginning "An experience rating plan. . ."). The computation period is 48 months, ending on June 30 of the year prior to the year for which the rate is applicable. Note that any special assessments and the Workforce Development Fee must be added to the percentages discussed above to arrive at the total chargeable.

An experience rating plan is in effect for those employers who have been liable under the law for a sufficient period of time to establish some measure of their experience with employment. Experience rates increase or decrease according to the employer's experience with unemployment applications. Experience rates range from a minimum rate of one-tenth-of-one-percent to five-tenths-of-one-percent (depending on the balance in the Minnesota Unemployment Insurance Fund on March 31 of the preceding calendar year) to a maximum rate of 8.90 percent (plus any special assessments and the Workforce Development Fee). The UIMN Website (www.uimn.org) provides detailed information.

New employers who acquire a business by purchase, change of legal entity or by any other means, should also pay particular attention to the section above, entitled "Determining Succession". If the entire business was acquired and the predecessor and successor share 25% or more common ownership, the successor will be required to inherit the employment experience record of the predecessor. Common ownership includes ownership by a spouse, parent, child, brother, sister, aunt, uncle, niece, nephew or first cousin by birth, marriage or adoption. If this is the case and the predecessor's rate was high, so too will be the successor's rate, until the successor establishes a better benefits experience record during the following years. If a distinct severable portion of the business of a commonly owned predecessor is acquired, the successor may apply for the portion of the predecessor's experience record that is applicable to the portion of the business acquired.

Additional and Special Assessments

There is currently an Additional Assessment to replenish the UI Trust Fund. The Additional Assessment is 14 percent of tax due. There is also a Special Assessment to pay interest on federal loans which kept the Minnesota Unemployment Insurance Trust Fund solvent during recent periods of high unemployment. The Special Assessment changes annually, and is 0.00 percent of the sum of the tax due plus the Additional Assessment.

Special Fee for Workforce Development

A special Workforce Development Fee of twelve one-hundredths of one percent (0.12%) of taxable payroll is imposed on all taxpaying employers. This fee is paid with the quarterly tax, and is deposited in the Workforce Development Fund, which is used to fund programs that help dislocated workers.

Interest Charged on Late Tax Payments

If the taxes due are not received by the due date, the employer is charged interest at the rate of one-and-one-half percent per month or any part thereof, from the due date until payment is received by UIMN. The UI Program is required by law to assess such interest and collect it (by court action, if necessary). Interest charges may be waived if a late payment is attributable to certain extenuating circumstances as provided in department rules. All requests for waiver must be in writing, and the reasons for late payment must be substantiated.

Late Fees for Failure to File Timely Reports

An employer who knowingly fails to file a Quarterly Wage Detail Report by the due date is required to pay a late fee in addition to the interest charged for not paying the tax in a timely manner. Employers who file the Wage Detail Report but knowingly fail to include any part of the required information or knowingly enter erroneous information, are also subject to an administrative fee. Reports are required from all covered employers, even though they may have had no employees during the quarter, and therefore owe no tax. Even though no tax is due, the late fee will still apply if the report is filed late. Additional information on interest and administrative fees is available on the UI Program's website at: www.uimn.org

Adjustments and Refunds

An employer that overpays the tax due may apply for an adjustment within four years from the date the tax was paid. To obtain an adjustment the employer should complete an adjustment transaction via the online employer system. Upon approval of the submission, the employer will receive a credit that can be applied to future taxes. When specifically requested, UIMN will issue a refund check for the full amount of the credit. An employer that fails to include all wages in a previous report should complete an adjustment transaction via the online employer system. Upon review and approval of the completed submission, the necessary adjustments will be made. Overpayments or underpayments may also result via UIMN's audit of an employer's payroll records. In such cases all adjustments permitted by law will automatically be made, and the employer will be notified of any overpayment or underpayment. Adjustments for a prior quarter should not be made on a subsequent quarter's Quarterly Wage Detail Report. All adjustments should be made to the quarter and year to which they relate.

Records

True and accurate employment records must be kept by all Minnesota employers, whether they are covered under the law or not. Since an employer's liability cannot be properly determined without such records, the records must be open at any time to inspection by UIMN. The law provides penalties and administrative fees to ensure compliance. Records must show, for each individual, the following: name; social security number; days and number of hours in which the individual performed services; location where the services were performed (i.e. "Reporting Unit"); gross wages paid and wages due but not paid for services; rate and base unit of pay; amounts paid as allowances or reimbursement for expenses; the date of separation and the reason for the termination; and the employee's complete home address. Wages paid and wages due but not paid

must be broken down to show the character of each payment. For example, meals, lodging, bonuses and gifts must be shown separately. Records must also show the following for each pay period: the beginning and ending dates of the period; the total amount of wages paid and wages due but not paid for services performed; and the date of payment. Employment records must be preserved for at least eight years after the calendar year in which the wages were paid or became payable.

Audits

UIMN's auditors perform regular examinations of employer payroll records. An audit to verify wage items and employment is generally confined to a single year, but may be expanded if errors or exclusions are found. All of the employer's records, including subsidiary records, must be made available to the auditor. The Program's auditors may also inspect records for the purpose of establishing an employer's liability under the law, to obtain information regarding an application for UI benefits and in connection with UI fraud investigations. The Minnesota Unemployment Insurance Law provides that the records of any employing unit must be open to inspection, audit and verification at any reasonable time, and as often as may be deemed necessary.

Personal Liability for Payment of Unemployment Insurance Tax

In the event that a corporation or limited liability company fails to pay its unemployment insurance tax, its individual officers, directors, employers, governors, members or owners who are responsible for filing UI wage reports and paying UI taxes may be held personally liable for any unpaid taxes interest and fees.

Contractor Penalty for Failure to Pay Unemployment Compensation Tax

An employer on any non-residential construction, repair, or remodeling project that fails to provide unemployment insurance coverage for employees may be sued for damages by any losing bidder on the project. The losing bidder may be entitled to recover the amount of profit the winning contractor expected to make on the project, as well as costs and attorneys fees.

Minnesota Unemployment Insurance Tax Rates

Under the law, each new employer is assigned a tax rate based on an average of the unemployment experience of all Minnesota employers. Employers in construction & construction-related businesses (“High Experience Rating Industries”) have been assigned a separate benefit cost rate based on the high experience of that industry.

The following table lists the Minnesota UI Tax Rates for the years 2009 and 2010:

Calendar Year	2010	2009
Taxable Wage Base (per employee)	\$26,000.00	\$26,000.00
Experience Rating Period	16 quarters	16 quarters
Tax Rate for New Employers (non-high experience rating industries)	1.91%	1.54%
Tax Rate for New Employers (high experience rating industries)	8.00%	8.00%
Maximum Rate for Experience Rated Employers	8.90%	8.90%
Base Rate (includes <i>Falling Trust Fund Adjustment Fee</i>)	0.50%	0.40%
Additional Assessment (as a percentage of tax)	14.00%	14.00%
Federal Loan Interest Assessment (a percentage of tax + Additional Assessment)	0.00%	0.00%
Workforce Development Fee	0.12%	0.10% & 0.12%
Falling Trust Fund Adjustment Fee (included in <i>Base Rate</i>)	0.10%	0.00%
Total Cost “Roll-up”* Rate for New Employers (non-high experience rating industry)	2.8674%	2.3116%
Total Cost “Roll-up”* Rate for New Employers (high experience rating industries)	9.81%	9.6760%
Total Cost “Roll-up”* for Minimum Rate Experience Rated Employers	0.69%	0.5560%
Total Cost “Roll-up”* for Maximum Rate Experience Rated Employers	10.836%	10.7020%

Note – In addition to the Tax Rates listed above, all employers are also subject to the Base Rate and other Assessments, including, but not limited to, a “Workforce Development Fee” of 0.12 percent (0.0012) of taxable payroll for the Dislocated Worker Program.

Similar to your automobile insurance policy, an experience rating is in effect for employers who have been liable under the law for a sufficient period to measure their experience with unemployment. The less unemployment a firm’s workers suffer, the lower the firm’s rate becomes. Generally speaking, an employer becomes eligible for an experience rating in the third calendar year of liability.

For example: To be eligible for an experience rated tax rate for 2010, a business must have been liable for Minnesota UI Tax and paid wages prior to July 1, 2008.

UIMN computes an experience rating for each eligible employer. The experience rating and the calculation used to determine the tax rate are provided in the employer’s Tax Rate Notice. Each year the rate notices are mailed to employers no later than December 15th.

Filing Minnesota UI Wage Reports & Paying UI Taxes

Definition of Wages

The term “wages” includes, but is not limited to:

- salaries
- cash wages
- commissions
- bonuses
- profit sharing
- tips
- payments made by a Subchapter S corporation to and/or on behalf of officers and shareholders which are reasonable compensation for services performed for that corporation (see “25% or more owner/officers” under non-covered wages in the Employer Handbook on the UIMN website at www.uimn.org/tax/hdbook/index.htm for exclusion criteria)
- reasonable value of meals, rent, housing, or any similar advantage
- back pay (which is reportable when it becomes due and payable)
- payments made under deferred compensation (401k, SEP, SIMPLE IRA, etc) or “cafeteria” plans.

All wages paid to covered employees during the calendar quarter must be reported. This includes commissions, bonuses, tips as well as the cash value of any remuneration other than cash. Wages must be reported for both full and part-time workers. Wages must be reported in the calendar quarter in which they are paid (or in which they became due, if they are delayed beyond the usual due date). Not all wages, however, are taxable. Taxes are paid only on the wages within the applicable wage base for each employee. All employers use a taxable wage base that is 60 percent of the state’s average annual wage. The taxable wage base is \$25,000 for 2008 and \$24,000 for 2007. You do not pay tax on any wages paid to each employee over this taxable limit. An employer is only required to pay tax on each employee’s annual wages up to the wage base limit and, therefore, must keep track of each employee’s earnings on both a quarterly and an annual basis.

Employer’s Unemployment Quarterly Wage Report

Unlike the federal government, which uses annual unemployment tax returns, Minnesota requires most employers to file unemployment wage reports and pay tax (taxpaying employers) on a quarterly basis. When an employer becomes liable, it must file quarterly wage reports and pay tax on the wages reported. All liable employers must file a wage detail report for each calendar quarter. Once an employer is liable under the law, reports must be filed for each quarter that the entity is in business, regardless of whether wages were paid in the quarter, or not.

Employers are required to file quarterly wage reports detailing the wages paid to each employee. The wage information required each calendar quarter includes each employee’s full name, social security number, total wages paid to the employee during the quarter, the number of hours worked by the employee in the quarter, and the employee’s work location (“Reporting Unit”). Assistance on specific problems not covered by the instructions may be obtained from the UI Employer Assistance Office of the Department of Employment and Economic Development.

The wage detail report is due and the tax is payable within one month after the end of each calendar quarter. Therefore, the wage detail report is due and the tax is payable on or before April 30, July 31, October 31 and January 31. If any of these dates fall on a weekend or state government holiday, the due date is the next business day.

The employer is also required to report the total number of covered workers who worked or received pay during each month of the quarter. Only the persons who worked or received pay during the payroll period which included the 12th of each month should be included in these totals.

All employers must file their quarterly wage detail report electronically, either via our website at: www.uimn.org, or by touchtone telephone at (651) 296-6141.

The Wage Detail Report is due, and the tax is payable, within one month after the end of each calendar quarter (i.e. on, or before, April 30, July 31, October 31, and January 31). If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day.

Electronic payments are available for ALL employers. Paper checks will continue to be accepted from most employers. Electronic payments are required for employers reporting 50 or more employees (note that this also applies to reimbursement of benefits paid by reimbursing employers) and agents who make payments on behalf of their clients (i.e. where the payment originates from an account that is NOT under the client's control).

Change in Ownership or Business Status

If you sell, transfer or change the legal entity (e.g. change from a partnership to an S Corporation) of all or part of your operations or cease doing business in Minnesota, you must notify the Department of Employment and Economic Development within 30 days after the date of the change. Please use the self-service employer system to report any changes in business status or ownership at www.uimn.org, or, if you do not have internet access, via touchtone telephone at (651) 296-6141.

Liability for a 501(c)(3) Organization

Federal tax exempt status does *not* relieve nonprofit employers from liability for other taxes, including state UI Tax.

A 501(c)(3) organization is liable for Minnesota unemployment purposes as soon as an employee performs service in Minnesota for which wages are paid.

Once an organization is liable under the Law, it must file quarterly reports with this department. Wages paid to each employee are usable as wage credits if the employee applies for UI benefits.

Reporting Method Options

A 501(c)(3) organization that is liable under the Law may choose from two methods for reporting wages to UIMN:

The Taxpaying Method

Employers who choose the taxpaying method must file quarterly tax reports listing wages paid during the quarter, and pay unemployment tax that is a percentage of the wages reported. Tax rates range from .10 percent to 9.5 percent, depending on the amount of Unemployment Insurance benefits that are charged to the account.

The Reimbursement Method

Employers who choose the reimbursement method do not pay quarterly UI Tax. They instead reimburse the department the full amount of UI benefits paid to former employees based on wages earned in their employ. Billing statements are mailed quarterly, and payment is due about 30 days after the mailing date.

Both taxpaying and reimbursing employers must file a wage detail report at the end of each quarter that lists wages and employment data for each employee during the quarter.

A 501(c)(3) employer must provide proof of its tax exempt status in the form of a copy of the federal tax exemption letter. Either method of reporting may be selected when the account is established or within 30 days of the date that the employer is notified of liability.

Changing Reporting Method

A taxpaying 501(c)(3) employer may change to the reimbursing method only if it has been assigned the minimum tax rate and has no benefit charges pending against the taxpaying account. The written notice to change to the reimbursing method must be filed with UIMN by December 1st of the year before the change is to take effect. The election must stay in effect for two full calendar years.

An employer that has been reimbursing for at least two calendar years may change to the taxpaying method by notifying UIMN electronically by December 1 of the year before the change is to take effect.

Social Security Administration

W-2s and W-3s

Form W-2, Wage and Tax Statement

Use Form W-2 to record your employees' earnings. From these reports the Social Security Administration (SSA) computes employees' benefits at the time of retirement or disability — or their family's survivor benefits at death. Earnings are also used to determine eligibility for Medicare.

The IRS also uses the reports to enforce income tax laws and to ensure that the FICA taxes you pay are properly credited to both programs.

The IRS and SSA also share the data with other agencies to make sure that only those people who meet the requirements qualify for income maintenance and other public welfare programs.

Form W-2 is used to report any wages and tips paid, income tax withholding, social security and/or Medicare tax withholding, and any advance EIC payments. It also reports whether or not an employee is covered by a pension plan or receives other fringe benefits.

If, as an employer, you withheld federal income tax, social security or Medicare taxes, you must give a Form W-2 to the employee and to the SSA. The SSA passes on the information to the IRS.

You need to complete and send the form to the employee by January 31 or within 30 days after going out of business. By February 28, send all your W-2s along with Form W-3, Transmittal of Income and Tax Statements, to the SSA.

If you process 250 or more W-2s, you must give your employees their paper copies of the W-2, but submit the same information to the SSA using magnetic media. Instructions are available from the SSA. Businesses can now file W-2 reports electronically. You can complete up to 20 form W-2s right on your computer, electronically submit them to SSA and print copies suitable for distribution to your employees. You will need Acrobat Reader 5.0, or a higher version of this software, to print employee copies. This option is ideal for businesses with 20 or fewer employees or for individuals with household employees. See the social security website www.ssa.gov/employer/guidewebnew.doc and/or www.ssa.gov/employer/erii2b.htm for more information.

If submitting this information via magnetic media causes you financial hardship, you can request a waiver of this requirement from the IRS. Use Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media. Apply at least 45 days before the due date of the returns. If you have been granted an IRS waiver, the W-2 forms you submit must be machine-readable.

Important W-2 Items

Box b. Employer's identification number. The W-2 cannot be processed if EIN is omitted.

Box c. Employer's name, address and zip code. Must be completed on each form. This information is used to correspond with employer in individual cases.

Box d. Employee's Social Security number. Verify accuracy of this item. Verify number when hiring new employees by looking at the SSN card (also an acceptable document for Immigration Form I-9).

Box e. Employee's name. Name must be in format of first name, middle initial, last name. Do not use titles. You should show name as it reads on the Social Security card.

Box f. Employee's address and zip code. Show employee's mailing address. If there is a name and Social Security number problem, SSA would prefer to contact the individual. If the individual can't be contacted, the SSA will contact you.

Box 15. Check all boxes that apply. If you need to subtotal (more than 41 forms) check the subtotal box here and total money boxes 1 – 11 and 13. Do not enter codes with subtotal amounts in boxes 11 and 13. However, in box 13, subtotal only codes D, E, F, G and H as one amount. Void W-2 forms count as a form but are not counted in the money items. Again, you will need to subtotal every 41 forms and any remaining forms after the last subtotal form.

Form W-3, Transmittal of Income and Tax Statements

After you have completed all your W-2 forms, you will use Form W-3 as a transmittal sheet to SSA. The W-3 summarizes all money items on the W-2s. It also gives basic employer information such as type of report you submit to the IRS.

Important W-3 Items

Box b. The kind of payer box should always be completed.

Box c. Fill in the total number of W-2s you are sending with this W-3. This helps identify any missing W-2s. Do not count voided W-2 forms or subtotal W-2 forms.

Boxes e, f and g. Employer's EIN, name, address and zip code.

Box h. Write in any other EIN used during the tax year. This ensures proper matching of IRS and SSA records.

Completing Forms W-2 and W-3

See the following website for instructions on how to complete your forms W-2 and W-3:

www.ssa.gov/employer/erii2b.htm

If you hand write your W-2s, machines can't read them. Make sure the handwriting is clear so clerks will not have to guess at the information.

Always use W-2 and W-3 forms printed for the same tax year. The forms change each year, so, if you use a form from a prior year, you may report wrong information. All entries must be in standard typeface or machine print. The scanner cannot read handwriting, fancy script, or italics.

Keep entries within the boxes, well separated from other printing and red shading. The entries should be clear, sharp images. The scanner will not pick anything that falls into the shaded areas up.

Use dark blue or black ink. Do not use ink containing red dye.

Do not cut, fold, staple, paper clip, tear, or otherwise mutilate the page. Include the entire page of both forms even if only one form is used.

Do not use dollar signs with money amount entries. Use decimal points only to distinguish between dollars and cents. Do not use commas in money amounts.

If you make an error on the form, check the void box and go on to the next form. You are not allowed to erase or use correction fluid or tape. If you have more than 41 W-2 forms, you will need a subtotal W-2 form.

Reconciling Forms W-2, W-3, and 941

When there are discrepancies between Form 941 filed with the IRS and Forms W-2 and W-3 filed with the SSA, we must contact you to resolve the discrepancies. This costs time and money, both for the Government and for you the employer.

To help reduce discrepancies:

1. Report bonuses as wages and as social security and Medicare wages on Forms W-2 and 941.
2. Report both social security and Medicare wages and taxes separately on Forms W-2, W-3, and 941.
3. Report social security taxes on Form W-2 in the box for social security tax withheld, not as social security wages.
4. Report Medicare taxes on Form W-2 in the box for Medicare tax withheld, not as Medicare wages.
5. Make sure social security wage amounts for each employee do not exceed the annual social security wage base.
6. Do not report noncash wages that are not subject to social security or Medicare taxes as social security or Medicare wages.
7. If you used an EIN on any quarterly Form 941 for the year that is different from the EIN reported on Form W-3, enter the other EIN on Form W-3 in the box for "Other EIN used this year."

To reduce the discrepancies between amounts reported on Forms W-2, W-3, and 941:

1. Be sure the amounts on Form W-3 are the total amounts from Form W-2.
2. Reconcile Form W-3 with your four quarterly Forms 941 by comparing amounts reported for:
 - a. Income tax withholding
 - b. Social security wages, social security tips, and Medicare wages and tips. Form W-3 should include Form 941 adjustments only for the current year (i.e., if the Form 941 adjustments include amounts for a prior year, do not report those prior year adjustments on the current year Forms W-2 and W-3).
 - c. Social security and Medicare taxes. The amounts shown on the four quarterly Forms 941, including current-year adjustments, should be approximately twice the amounts shown on Form W-3. This is because Form 941 includes both the employer and employee shares of social security and Medicare taxes.

d. Advance earned income credit.

Amounts reported on Forms W-2, W-3, and 941 may not match for valid reasons. If they do not match, you should determine that the reasons are valid. Keep your reconciliation so you will have a record of why amounts did not match in case there are inquiries from the IRS or the SSA.

Correcting Forms W-2 and W-3

If you notice an error on a W-2 prior to mailing copy A to the SSA, correct it. If you find an error after you have mailed copy A, correct the information by completing Form W-2C, Statement of Corrected Income and Tax Amounts. For tax years after 1977, the W-2C is used to correct any field on the W-2. Only correct the field that is in error.

You must complete the top portion of W-2C and only the fields in error on the original Form W-2. W-2C is used to correct name, Social Security number, and money fields. If you are correcting a money field, you must complete columns A, B and C for each incorrect money item.

If you send more than two W-2Cs, you will also need to send a Form W-3C, Transmittal of Corrected Income and Tax Statements. You may use the W-3C alone if you are only correcting your EIN.

If the SSA cannot match the name and/or Social Security number on the reporting form with the name or Social Security number on SSA records, the Data Operations Center will contact the employee, sending him or her a request form at the address you supply.

If an employee cannot be contacted, the employer will receive a request for information from SSA.

There are IRS penalties for sending in W-2 forms without a Social Security number or an EIN. The penalty is \$50 per form up to \$100,000.

Employees can check the accuracy of their Social Security records by completing Form SSA-7004, Request for Earnings Statement and Personal Benefit Estimate. You may want to have a few forms on hand in your office for your employees.

This can be requested by calling SSA's toll-free number: 1-800-772-1213.

Employees can replace lost Social Security cards free of charge by completing a request for replacement card and showing identification.

Workers Compensation

What is Workers' Compensation Insurance?

Workers' compensation insurance provides compensation to employees who have a work-related injury or disease. Compensation includes partial wage replacement and full payment of medical and rehabilitation costs. In case of death, benefits are paid to employees' dependents. The law is designed to standardize benefit structure, reduce litigation, and encourage good employee/employer relationships.

Who is Required to Have Workers' Compensation?

Generally, all employers are required to carry insurance and to display the name of their insurer in a conspicuous place. An employer is a person or entity that employs another to perform a service for hire. Certain types of employers are exempt from this general requirement. These employers include some small family farms and family businesses without non-family employees. Some independent contractors are exempt as sole proprietors, but independent contractors who have employees must carry workers' compensation insurance for their employees. More details on coverage requirements and exemptions are given in the following sections.

An employer on any non-residential construction, repair or remodeling project that fails to provide coverage for employees may be sued for damages by any losing bidder on the project. The losing bidder may be entitled to recover the amount of profit the winning contractor expected to make on the project, as well as costs and attorney fees.

Who is covered Under Workers' Compensation?

Employees of profit making organizations, such as corporations, partnerships and sole proprietorships; charitable organizations; and state, county and local government agencies, as well as certain farm workers, must be covered by insurance.

What is covered by Workers' Compensation Insurance?

The insurance covers injuries and diseases that arise out of and in the course and scope of employment. A work-related disease or injury is a condition that is caused, aggravated, precipitated or accelerated by the work or the work environment. Covered injuries can occur at the work place or outside the work place if the employee is out on an assignment or is in transit between different work sites.

Buying Workers' Compensation Insurance

There are several hundred licensed agents who sell this insurance in Minnesota. In Minnesota, workers' compensation insurance is sold through open competition, which means insurance companies establish rates and compete for business. There is limited rate regulation by the Department of Commerce. All policies provide coverage mandated by law; therefore only the price varies. Other factors to consider in choosing a carrier are claims servicing, safety counseling and the carrier's reputation.

When Must I Purchase Workers' Compensation Insurance?

Workers compensation must be purchased by the time employees are hired so that they are covered. Under Minnesota Statutes, [Section 176.181, Subd. 3](#), any employer that does not provide workers' compensation liability protection for their employees may be ordered both to obtain the insurance, and refrain from employing any persons until compliance with the mandatory coverage provision has been met.

In addition, the Commissioner of the Minnesota Department of Labor and Industry has the authority, under the Statute, to penalize businesses that fail to comply with monetary penalties of up to \$1,000 per employee per week that the business was uninsured. These penalties are issued with regularity.

Who Is an Employee?

Please refer to previous section "Independent Contractor or Employee?" for additional information on this subject.) For workers compensation purposes an employee is "any person who performs services for another for hire..."

Sometimes a worker is asserted to be an independent contractor rather than an employee. "Worker" means employee for worker's compensation purposes. To validly be an independent contractor an entity generally is in business for itself and is not subject to the direction or control of another. Workers compensation rules create "safe harbors" in 30-some occupations, listing the criteria that show whether a relationship is an employment relationship or an independent contracting relationship. M.R. Parts 5224.0010 to 5224.0340. Recent legislation clarified what is needed to demonstrate this independent relationship in the construction industry. It includes factors such as the "independent contractor" maintaining a business with an office and equipment, controlling the means of doing the work, risking profit or loss by competitively bidding or doing commission work, and incurring the expenses of the work.

Also see: "Independent Contractor Exemption Certificate" available online at:

www.dli.mn.gov/CCLD/ICEC.asp

Role of Commissioner of Labor and Industry

The Commissioner of the Department of Labor and Industry (www.dli.mn.gov), through delegated authority, is responsible for enforcing the mandatory coverage law and is given broad powers for carrying out these duties. These include the power to enter work premises, inspect business records, take depositions, issue subpoenas, and compel the production of documents.

When a coverage question arises, the department first searches a computer database maintained by the Minnesota Workers' Compensation Insurers' Association, a data service organization that compiles a list of companies and their workers' compensation insurance policies. If the company has insurance in force, the commissioner's investigation ends at this point. If, however, the company has no insurance, or it appears the policy has lapsed, the investigation continues. Usually, one of the commissioner's representatives will write or visit the company in person.

It Is Employers That Need Workers' Compensation Insurance

Under Minnesota Statutes, Section 176.041 businesses in which the only employees are close family relatives are not required to have workers compensation.

Sole Proprietorships

Sole proprietorships, with only a spouse, parents or children of the owner as employees, are exempt from workers' compensation insurance. However, once the owner hires an employee who is not a spouse, parent or child, coverage is required.

Partnerships

Bona fide partnerships are not required to have workers' compensation coverage on the spouse, parents, or children of the partner. Once the partners hire a worker who is not such a close relative, however, the insurance is required.

Closely Held Corporations

Closely-held, corporations are defined in workers compensation as incorporated businesses that have 10 shareholders or less, and which have paid less than 22,880 hours worth of payroll in the preceding calendar year. If the corporation has employees it must have workers compensation insurance on them except as follows: Executive officers who own at least 25 percent of the corporation's stock are automatically excluded from having to be covered. Likewise, closely held corporations, hiring spouses, children and parents, of these exempt executive officers are not required to provide workers' compensation protection for these employees. A similar exemption is allowed for limited liability company managers and their corresponding relatives.

Other Corporations

Other corporations must have workers compensation insurance for all their employees including executive officers who are employees.

More distant relatives such as brothers, sisters, aunts, uncles, grandparents, grandchildren, nieces, nephews, cousins, or these same in-laws of an executive officer who owns 25 percent or more of the closely held corporation's stock are only exempt from coverage if the business owner submits a written application to the Department of Labor and Industry to exclude them.

Farming Operations

Farmer employers must provide workers compensation coverage for their workers. Family farms are automatically exempt from providing workers' compensation protection for spouse, parents or children of the owner. Family farm is defined as one that paid or owed at least \$8,000 in farm wages to laborers during the preceding calendar year, or if wages are paid in amounts less than the statewide annual wage (roughly \$26,000) and the farm had liability and medical payment coverage for its laborers as specified in the law. Also, any farmer or member of that farmer's family who performs services in exchange for farm labor performed by another farmer or his family, that live in the same geographic community, is automatically exempt from coverage. No application is necessary to obtain this exclusion.

Election of Coverage

Many small business owners elect coverage for their partners, family members or themselves, as allowed even though they are not required to do so.

Minnesota Department of Human Services

Employers are vital to helping children and families receive child support. Minnesota has long been an leader among states in providing child support services, using tough enforcement tools when needed to collect the child support children need. Employers play a pivotal role in the state's child support efforts and make a valuable contribution to the lives of Minnesota's children. In 1998, employers helped collect over \$266 million in support through income withholding. Cooperation between employers and child support agencies encourages parental responsibility, reduces the taxpayer's costs for public assistance, and helps families provide for their children. This section contains information about employer responsibilities regarding new hire reporting (also known as work reporting), income withholding, and medical support. This section also reviews the responsibilities of income withholding for child support, childcare support, medical support, and spousal maintenance for other payors of funds.

New Hire Reporting

What must I do when I hire an employee?

Effective July 1, 1996 you must report the hiring of any new or re-hired employee to the Minnesota New Hire Reporting Center within 20 calendar days of hiring the individual. You must include the employee's name, address, Social Security number, and, if available, date of birth, date of hire and state of hire. Additionally, employers must provide their own name, mailing address, and federal identification number with each report.

How do I report this information to the Department of Human Services?

You can submit your new hires on-line at www.mn-newhire.com or you may fax or mail a completed copy of the employee's Form W-4 to the New Hire Reporting Center at (651) 227-4991 or (800) 692-4473, P.O. Box 64212, St. Paul, MN 55164-0212. Please make sure blocks eight and ten of the Form W-4 are also complete. Other reporting methods include printed lists, magnetic tapes, diskettes, electronic transfers, and telephone responses. For information about other methods of reporting call (651) 227-4661 or (800) 672-4473.

What are the sanctions if I fail to report a new or rehired employee?

If you fail to report, the commissioner of human services will send a notice, to you, of noncompliance by certified mail. Any failure to report a new or rehired employee after receiving a notice of noncompliance may result in a \$25 civil penalty for each intentionally unreported employee. A \$500 civil penalty may result if the failure to report stems from a conspiracy between you and an employee to avoid the reporting or to supply incomplete or false information.

Income Withholding

Who is required to withhold child support, medical support, childcare support, and spousal maintenance?

The law requires employers, trustees, self-employed persons, financial institutions, and other payors of funds to withhold child support, childcare support, medical support, and spousal maintenance. The term “other payors of funds” may include workers’ compensation insurers, unions, individuals or companies paying independent contractors and others who make periodic payments to people who have a support obligation.

How will I know if I must withhold?

You may find out about an order for income withholding by receiving a copy of an order or a notice to withhold income for child support, childcare support, medical support, or spousal maintenance. This type of order or notice is considered “automatic” because the withholding must begin immediately when a support order is established or modified, regardless of an employee’s delinquency. This document may come from a county child support agency, court administrator’s office, or private attorney.

May I avoid income withholding for my employees?

No. You must implement income withholding even if the employee is willing to make payments directly. A court may hold you in contempt for failure to comply with these provisions and hold you liable for the amounts of support you should have withheld. Calling employees independent contractors does not change your responsibility to withhold. You may not be an employer but you are a payor of funds and are subject to the income withholding. You may not discharge, refuse to hire, or discipline employees because you must withhold income for them.

Is an income withholding order a result of delinquency?

Not necessarily. Since January 1, 1994, all court orders for child support require support to be paid through income withholding. The majority of income withholding orders are automatic, whether or not the parent is delinquent.

When do I start withholding?

According to Minnesota law, you must comply with an order or notice of withholding upon receipt. Withholding must begin no later than the first pay period occurring 14 days after receipt of the order or notice of withholding.

For example: If you receive an order or notice to withhold on the 5th of the month and the pay periods that month are the 10th and the 25th, you must start withholding no later than the pay period that occurs on the 25th.

Where should I send the money?

All child support withholding must be sent to one central location in Minnesota. The address for remitting child support withholding is:

Minnesota Child Support Payment Center
PO Box 64306
St. Paul, MN 55164-0306

Can I send the money by electronic funds transfer (EFT)?

Yes, you can send the money by EFT using the Automatic Clearing House file formats of CCD+ and CTX.

How do I sign up for EFT?

Call (651) 215-1717 or (800) 657-3890, to sign up for EFT. Follow the cues on the integrated voice response system regarding EFT. You will be given an option to request a packet of information that includes an authorization form for EFT. Complete the form as instructed and return it to the address provided on the form.

How often do I send the money?

Remit the amount you withhold from an employee's pay check no later than 7 business days after you paid the employee the remainder of the income.

What information must I include with payment?

Include the employee's name, social security number, case identifier if known, court file number if known, pay period dates, and the date you paid the employee the remainder of the income.

Can I send one check if I have several employees subject to income withholding from the same county child support agency?

Yes. When you are withholding for more than one employee, you may combine all amounts withheld from one pay period into one payment. However, you must identify each employee making a payment with their name, Social Security number, case identifier, if known, the amount to be credited to each employee, and the date you paid the employee the remainder of the income.

Several of my employees have wage attachments against their income. Which attachments have priority?

Minnesota statutes require that withholding of child support, spousal maintenance, medical support, child care support, and support arrearages take priority over any other attachment, execution, garnishment, or wage assignment. If support arrearages or court expenses have been reduced to judgment, and you have been served with a garnishment or execution, that county garnishment or execution has priority over any other garnishment or execution for money owed to private creditors. However, these attachments do not have priority over income withholding for current support.

Is there a limit to the amount I can withhold from an employee's income?

Yes. The total amount you can withhold from an employee's income is limited by the Federal Consumer Credit Protection Act (CCPA). CCPA limitations are as follows:

- 50 percent of disposable income if an employee is living with a second family
- 55 percent of disposable income if an employee is living with a second family and there are arrearages 12 or more weeks overdue
- 60 percent of disposable income if an employee is not living with a second family
- 65 percent of disposable income if an employee is not living with a second family and there are arrearages 12 or more weeks overdue

Note: The CCPA limitations do not apply to independent contractors.

How do I handle more than one withholding request for support for a particular employee?

You must withhold all court-ordered support amounts and forward the payments as requested if there is adequate remaining income under the CCPA.

What if the employee doesn't have enough income to pay the court-ordered support?

If the employee does not have sufficient income to withhold the court-ordered amounts, you must send the amount allowed under CCPA.

If I receive a withholding request from another state, what should I do?

You must immediately comply with an order or a notice to withhold income for child support from another state as if it had been issued in Minnesota. You must send the support to the child support agency requesting the income withholding. Do not send the support to the Minnesota Child Support Payment Center. If you have questions, contact your local county child support agency or the Minnesota Department of Human Services Child Support Enforcement Division.

Must I withhold support from employees who receive commissions?

Yes. Minnesota law requires that all income be subject to withholding for child support, medical support, childcare support, and spousal maintenance. Therefore, commissions are subject to all the withholding statutes.

What are my responsibilities with lump sum payments?

Lump sum payments include, but are not limited to, accumulated vacation or sick pay, severance pay, bonuses, commissions, and profit sharing. If you pay a lump sum of \$500 or more to an employee and income withholding is in place, you must notify the child support agency of the amount the employee is receiving and hold the entire lump sum amount for 30 days beyond the date you would have paid the lump sum to the employee. Lump sums are not held to CCPA limits. If you receive an order or affidavit from the child support agency regarding this lump sum, you must follow the requirements of that order or affidavit and send the lesser of the following:

- the amount in arrears, or
- the portion of the arrears stated in the court order or affidavit.

When do I stop or change the withholding?

Withholding remains in effect until the originating child support agency notifies you in writing of any changes to the order. Employees cannot change the amount to be withheld or terminate the income withholding.

What should I do when an employee leaves?

Within 10 days of an employee ending employment, you must notify the child support agency or other entity that sent you the withholding of:

- the date employment ended
- the employee's last known address
- name and address of the new employer if known

You must also withhold support from the last payment you made to the employee. Make sure the withholding is applied to any lump sum payments such as sick pay, vacation pay, tax deferred savings pay, or severance pay.

Must I implement income withholding if an employee returns to work?

Yes. If income withholding was in effect when employment was terminated, you must implement income withholding immediately when the employee returns to work. Keep all notices to withhold in the employee's personnel file.

What are my liabilities if I don't carry out the withholding?

If you fail to withhold support, you will be liable for the full amount of support plus interest, as it accumulates from the date of the withholding notification. You may also be found in contempt of court and subject to a fine.

May I charge a fee for withholding?

Yes. You can charge the employee up to \$1 for each payment withheld.

Medical Support and Insurance

What are my responsibilities for new employees regarding medical support?

Employers no longer need to ask employees about medical support obligations. Minnesota law now requires the employee to disclose a medical support obligation to be withheld from their income at the time they are hired. If you receive a copy of a court order requiring medical support, you must withhold medical support payments from the employee's income.

What if I receive an order that requires the employee to provide insurance for their dependents?

You must enroll an employee's dependents in your health insurance plan upon receipt of an order to provide medical insurance even if the employee refuses to enroll the dependents. The employee may contest the enrollment within 15 days after the employer notifies the employee of the dependent's enrollment. Minnesota law provides a process for you to follow when an employee contests the enrollment or withholding. The enrollment must remain in place during the time period in which the employee contests the enrollment. The child support agency that sent the medical support order can provide any additional information you may need to enroll the children.

When can I stop providing medical coverage for an employee's dependents?

You cannot un-enroll or eliminate coverage unless the child support agency or employee has provided satisfactory written notice that the medical support order is longer in effect. If disenrollment is due to the employee's failure to pay the premium, you must provide 30-days written notice to the child's non-obligor parent prior to disenrollment or elimination of the health coverage. The child's non-obligor parent is usually the custodial parent. If you need information about who to send the 30-day written notice to, contact the child support agency or other entity that sent you the order or notice of withholding.

What if our company has more than one medical insurance plan?

If you offer more than one plan, enroll the dependents in the insurance plan that is the least costly plan available to the employee and comparable to a number two qualified plan. A number two qualified plan must have a deductible of no more than \$500 per person per year. Withhold any required premium for the dependent's health and dental insurance from the employee's income or wages.

How long must I cover an employee's dependents?

Insurance coverage for the dependents must continue as long as coverage is available to the employee, until the children are emancipated, or until further order of the court.

What are my liabilities if I fail to comply with the medical support withholding?

If you fail to comply with the withholding you will be:

- liable for any health and dental expenses incurred by the dependents during the period of time the dependents were eligible to be enrolled in the insurance program
- liable for any other premium costs incurred because of failure to comply
- subject to employer contempt
- subject to a \$500 fine to be paid to the custodial parent or public authority

Who should I give medical insurance information to?

Upon request, you must provide information about medical coverage to the custodial parent and the child support agency. This information may include including the name of the insurer, insurance identification cards, and all necessary written information. You must also forward a copy of the order to your health and dental insurance plan.

What if my company is self-insured?

The federal Omnibus Budget Reconciliation Act of 1993 amended the federal Employee Retirement Income Security Act of 1974 (ERISA) effective August 10, 1993. All self-insured businesses under ERISA must now comply with Minnesota statutes regarding medical support and are no longer exempt from the Minnesota health care statutes governing dependent health care coverage. You may no longer deny coverage to dependents who are not living with an employee, born out of wedlock, not totally supported by an employee, not residing in the health carrier's service area, or not taken as an exemption on the employee's federal income tax return.

What should I do when an employee leaves?

When an order for dependent coverage is in effect and employment is terminated, you should notify the custodial parent and the child support agency within 10 days of the termination date and include information about conversion privileges under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Who should I contact if I have more questions?

Minnesota Department of Human Services
Child Support Enforcement Division
444 Lafayette Road
St. Paul, MN 55155-3846
(651) 431-4551 or (800) 657-3890

Relevant Statutes

Minnesota Statute § 62A.011 Health Care

Minnesota Statute § 62A.04 Health Care

Minnesota Statute § 62A.048 Health Care

Minnesota Statute § 62A.06 Health Care

Minnesota Statute § 256.998 Work Reporting System

Minnesota Statute § 518.171 Medical Support

Minnesota Statute § 518.6111 Income Withholding

Minnesota Statute § 518.615 Employer Contempt

Minnesota Statute § 518C.501 Interstate Income Withholding

Minnesota Statute § 518C.5025 Interstate Income Withholding, Employer Compliance

Minnesota Department of Labor and Industry

Once you have determined you have employees:

- How much are you required to pay them?
- When are you required to pay them overtime, etc.?

You should note there are federal and state labor standards. All businesses are subject to state labor standards. Federal law may cover you as well. See explanation under *Who is Covered?* When both standards apply to your business you must follow whichever is the stricter standard or provides the best pay to the employee.

Minimum Wage

“The purpose of the Minnesota Fair Labor Standards Act is:

- to establish minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being,
- to safeguard existing minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not, and
- to sustain purchasing power and increase employment opportunities.”

Under the law, employers must pay their employees the minimum wage for all hours worked. “Hours worked” includes training time, waiting time, travel time, rest periods of less than 20 minutes, and any other time the employees must be at work. See also U.S. Department of Labor Fact Sheet ATL 93-22 in the Appendix. Federal rest periods of less than 30 minutes count as hours worked. Deductions from hours actually worked or from minimum wage cannot be made for any reason.

If all the required conditions are met, a percentage of meals and/or lodging can be credited toward minimum wage. It cannot be used for overtime purposes. For example, the caretaker of an apartment building receives, as a part of his payment, a reduced monthly rental rate. Usually the difference between the regular rental amount and the reduced rate can be counted toward minimum wage.

Minnesota’s minimum wage rates:

Large Employer	\$6.15 an hour
Small Employer	\$5.25 an hour
Training Wage	\$4.90 an hour

Products or tips may not be used (for work in Minnesota) to meet minimum wage or overtime requirements except under specific conditions for meals and lodging.

NOTE: Wage rates established by the Federal Act apply only when they are higher than the wage rates established by the Minnesota legislature. See explanation under *Who is Covered?*

Large Employer

Large Employer is defined as any enterprise whose annual gross volume of sales made or business done is not less than \$625,000.

Small Employer

Small Employer is defined as any enterprise whose annual gross volume of sales made or business done is less than \$625,000.

Training Wage

Applies only to new employees under age 20 for first 90 consecutive days of employment.

Non-Profit Employer

Substitute grants, dues, donations and other sources of income for annual gross volume of sales.

Adult/Minor

All persons must be paid the applicable minimum wage. *There is no longer a lower rate for minors.*

NOTE: Minnesota's Child Labor Laws prohibit the employment of minors under 14 years of age and limit the hours for minors under 16 years of age. Hour restrictions also apply to 16 and 17-year-old high school students working on a school day or a day preceding a school day.

Rest Periods

Although Minnesota law does not require an employer to give any specific amount of time for breaks, employers are required by law to allow an employee to use the nearest rest room facility once every four hours, and sufficient time to eat a meal once during every 8-hour period.

Who is covered?

The minimum wage law covers all full-time and part-time employees, whether paid hourly rates, commissions, salaries, or piece rates. Tipped employees are also covered, as *Minnesota no longer allows a tip credit*.

The employee's pay in a given work week must meet or exceed the applicable minimum wage rate, regardless of the method of compensation.

The **Federal Fair Labor Standards Act** will apply to:

- businesses with gross annual sales of more than \$500,000 and that produce, sell, handle or work on goods that have been moved or produced for interstate commerce; OR to
- businesses that were covered before 4/1/90 under the lower dollar volume tests of \$250,000 (or \$362,500 for retail businesses) or were named in the Act such as construction and laundry/dry cleaners; OR to
- **individual employees** of any business are covered if they are engaged in interstate commerce or in the production of goods for interstate commerce. Examples include those who regularly use the mails or telephones; keep records of interstate communication; handle, ship or receive goods crossing state lines or work for independent employers who contract to do clerical, custodial, maintenance or other work for firms engaged in interstate commerce or the production of goods for interstate commerce; AND to
- certain other businesses: hospitals and nursing homes, private and public schools, day care centers and federal, state and local government agencies.

Who is not covered?

Some employees are exempt from all minimum wage requirements.

These employees include: (partial list)

- baby-sitters (must not be full time or include house keeping)
- taxicab drivers
- volunteers of nonprofit organizations
- elected government officials
- employees subject to the provisions of the U.S. Department of Transportation (drivers, drivers' helpers, mechanics, and loaders).

Questions on Minimum Wage Laws?

For more information on minimum wage laws, contact:

Minnesota Department of Labor and Industry
Labor Standards Unit
443 Lafayette Road
St. Paul, Minnesota 55155
(651) 284-5005
www.dli.mn.gov

Overtime

The *Minnesota Fair Labor Standards Act* requires employers to pay overtime for all hours worked in excess of **48** per work week.

The *Federal Fair Labor Standards Act* requires covered employers to pay overtime for all hours worked in excess of **40** per week. These employers *are described in “Who is covered?”*

Federal overtime requirements are described in more detail in Fact Sheet ATL 93-17 in the Appendix.

What is the Overtime Rate?

Overtime rates must be at least one and one-half the employee’s regular rate of pay.

The regular rate of pay is determined by dividing the employee’s total pay in any work week by the total hours worked in the work week.

Who Must Pay?

Overtime pay is not discretionary. Both state and federal laws prohibit any agreement not to pay overtime to employees.

All firms must pay **Minnesota’s** overtime wage regardless of:

- the firm’s size, location, or gross sales,
- the method of compensation; i.e., hourly, salary, commission, piece rate or other, or
- designations such as part-time, temporary, seasonal, or contract.

How are Hours Worked Counted?

All hours the employee is required to be on the premises, whether working or not, are counted for overtime purposes unless the employee is living on the premises or on duty 24 hours or more at a time.

1. Holiday hours, vacation time, or sick leave are not counted in figuring overtime hours.
2. Overtime is computed on a work week basis regardless of the length of the pay period. Hours worked may not be averaged over the pay period or used to offset shorter work weeks.
3. Hospitals, nursing homes, and residential care establishments may choose to pay overtime after 8 hours per day and 80 hours per two-week period.
4. Employees working more than one job under the control of the same employer must have all hours worked counted toward overtime.

Who is Exempt?

Some employees are exempt from Minnesota and Federal overtime wages. *The following is a partial list:*

- **Various employees**
 - Executive, administrative or professional employees who meet the salary* and duty requirements of the department's rules.
 - A retail or service employee paid more than half their income on a commission basis, if the regular rate of pay exceeds one and one-half times the minimum wage and more than half of their earnings come from commissions in a representative period.
 - An outside salesperson, away from the employer's place of business at least 80% of the work time. Employer's place of business includes a fixed place such as a home or a credit union even though not owned by the employer.
- **Vehicle dealership employees**

A salesperson, parts person or mechanic who:

 - sells or services automobiles, trailers, trucks or farm implements, and
 - is paid on a commission or incentive basis, and (this requirement not in federal law)
 - is employed by a dealer selling to the consumer.
- **Agricultural workers**
 - any minor (at least 12 years of age and under the age of 18)
 - any two specified workers being paid a salary*
 - any worker paid a salary* of at least 73.5 times the appropriate minimum wage.

NOTE: Overtime is **not** required under **federal** law for any agricultural work performed on a farm for a farmer. Overtime must be paid under state law for agriculture after 48 hours unless meeting the above specific exemptions.

NOTE: Minors employed as corn detasslers or hand field workers (with parent or guardian) are not exempt.

* **Salary** - A salary is defined as a guaranteed predetermined wage for each work week. It is **not** an hourly rate.

- **Other employees**

Some exemptions are available for agricultural, executive, administrative, and professional employees. For this information, contact the Department of Labor and Industry. For **federal** guidelines contact the U.S. Department of Labor, Wage and Hour Division or see Fact Sheet ATL 93-17 in the Appendix.

Rules for Exemptions —

Rules for exemptions are found under parts 5200.0180 to 5200.0210 and may be accessed on the Revisor of Statutes website located at www.revisor.leg.state.mn.us. You may also contact the Department of Labor if you wish to have copies mailed to you.

Part 5200.0180, Executive, Administrative, and Professional Personnel

Subpart 1. Duties determine status. The primary duties of the employee are determinative of his or her status under this exemption. Only where the employee's primary duties meet all the criteria under a particular test may the employer consider the employee to be exempt from the overtime wage provisions.

Subpart 2. Definition of manage. For purposes of Parts 5200.0180 to 5200.0210, the term "manage" means to control and direct the business operations of a given enterprise, department, or branch establishment. Duties involved in managing must involve the making of decisions and the issuance of directions to other employees, which involve skill and judgment. The term includes those employees that act primarily and principally in a directive capacity as opposed to those who primarily do the actual work.

Subpart 3. Discretionary powers. The thrust of this criterion is to distinguish between those employees empowered to independently commit their employers on matters of importance and those employees who merely make day-to-day decisions which, although necessary to the daily operations of the employer's business, are routine, or follow prescribed procedures, or involve a determination of whether specific standards are met, or are lacking in substantial importance to the employer's business as a whole. One test which should be utilized in determining whether an employee exercises discretionary powers is to ask whether the decisions being made involve discretion as to company policy or procedure or commit the employer on matters of substantial importance. Mere recommendations with respect to policies and procedures are not sufficient unless it can be shown that the employer consistently accepted and followed those recommendations.

Subpart 4. Sole charge. Only one employee per enterprise, department, or branch establishment may be considered to be in sole charge regardless of the number of work shifts per day.

Subp. 5. Determination of exempt and nonexempt work. In determining exempt and nonexempt work under parts 5200.0180 to 5200.0210, work directly related to executive or administrative work may be included if the executive work which it relates to is actually performed by the employee. It is not sufficient to claim certain work is exempt where the executive or administrative function it might be directly related to is not performed by the employee.

Questions on Coverage/Overtime/Exemptions:

Minnesota Department of Labor
Labor Standards Unit
443 Lafayette Road
St. Paul, Minnesota 55155
(651) 284-5005
www.dli.mn.gov

U.S. Department of Labor
Wage and Hour Division
Midland Square, Suite 920
331 Second Avenue South
Minneapolis, MN 55401
(612) 370-3371 or www.dol.gov

Child Labor Standards

Employers should be aware that there are both federal and state Child Labor laws. The same criteria used to determine coverage for minimum wage and overtime laws is used to determine coverage under these laws. The federal restrictions on hours that minors under 16 may work during the school year are marked **with asterisks below and further explained in Fact Sheet ESA 91-3 in the Appendix**.

Minimum Age

A minor under 14 years of age may not be employed, except:

- as a newspaper carrier, if at least 11 years of age,
- in agriculture, if at least 12 years of age and if parents or guardians consent,
- as an actor/actress or model.

Proof of Age

The proof of age must be maintained as part of the payroll records. Acceptable proof is one of the following:

- copy of a birth certificate,
- copy of a driver's license, or
- an age certificate issued by the school.
- Immigration and Naturalization form (I-9)

Hours of Work

A minor under the age of 16 may not work:

1. Before 7:00 a.m. or after 9:00 p.m.* with the exception of a newspaper carrier.
2. For more than 40 hours per week* or more than 8 hours per 24-hour period* except in an agricultural operation.
3. On school days, during school hours, without an employment certificate issued by the appropriate school officials.

*During the school year, federal law restricts hours to no later than 7 p.m., no more than 3 hours per day and not more than 18 hours per week.

High school students 16 and 17 years of age may not work:

1. Before 5:00 a.m. on a school day.
2. After 11:00 p.m. on an evening before a school day. May work until 11:30 p.m. with written permission from the parent/guardian.

Prohibited Occupations for Minors Under Age 18

The Minnesota Commissioner of Labor and Industry has established as hazardous or detrimental to the well being of minors the occupations listed below. The Federal Fair Labor Standards Act establishes additional hazardous occupations.

A minor under the age of 18 may not be employed:

Liquor

- To serve, dispense or handle intoxicating liquors consumed on the premises.

NOTE: Public Safety/Liquor Control Laws prohibit selling intoxicating liquor in a retail store even though the liquor is not open or being consumed on the premises.

- To work in rooms where liquor is served or consumed, with the following exceptions:
 - 17-year-olds may perform bussing or dishwashing services in a restaurant
 - 16- and 17-year-olds may provide musical entertainment in a restaurant.

Hazardous Materials

- Where chemicals or other substances are present at excessive temperatures or injurious, explosive, toxic, or flammable quantities.
- Where explosives or fireworks are manufactured, stored, handled, or fired.

Hazardous Operations

- In or about logging or lumbering operations, paper mills, saw mills, lath mills, or shingle mills, mines, quarries, and sand or gravel pits, construction or building projects, ice harvesting operations.
- In building maintenance or repair higher than 12 feet above ground or floor level.
- In oxyacetylene or oxyhydrogen welding.
- Roofing Operations

Transportation

- On boats or vessels used for commercial purposes, except, if performing guide or other non-operational services.
- Driving buses, cabs or other passenger-carrying vehicles as a driver for hire.
- In certain railway occupations.
- Driving a motor vehicle even when the minor owns the vehicle.

Machinery

- Cleaning, operating or assisting in the operation of power-driven machinery, such as:
 - industrial trucks (forklifts)
 - meat saws and meat grinders, milling machines, and meat slicers
 - punch presses, press brakes, and shears
 - woodworking machinery, such as, circular saws, radial saws, joiner, and shaping machines.
 - dough mixers and meat slicers regardless of what products are being mixed or sliced.
 - operating a paper baler.
- Operating any nonautomatic elevator, lift, or hoisting machine.
- Operating, erecting, or dismantling rides or machinery in an amusement park, street carnivals, or traveling show, or in the loading or unloading of passengers on rides.

Other Prohibited Occupations

- In aerial or other acrobatic acts.
- As a lifeguard, except for a minor with Red Cross life-saving certificate (or equivalent) who works under uninterrupted adult supervision.
- In any occupation or activity, or on any site, which is hazardous or dangerous to life, limb or health.

Prohibited Occupations for Minors Under Age 16

In addition to the prohibitions above, no minor under the age of 16 may be employed:

Machinery

- Operating or assisting in the operation of machinery, such as:
 - farm type tractors and other self-propelled vehicles, except for equipment permitted by certificate of training under either the 4-H Federal Extension Service or U.S. Office of Education Vocational Agricultural Training Program
 - laundry, rug cleaning, or dry cleaning equipment
 - power-driven snowblowers, lawn mowers and garden equipment
 - drill presses, milling machine, grinders, lathes, and such portable power-driven machinery as drills, sanders, and polishing and scrubbing equipment for floor maintenance
 - meat slicers, textile-making machines, or bakery machinery.
- In oiling, cleaning, or maintaining any power-driven machinery.
- In work using pits, racks, or lifting apparatus at service stations or in mounting tires on rims.
- In a car wash to attach cars to or detach them from mechanized conveyor lines or to operate or contact the car while it is connected to the conveyor.

Agriculture

- In any agricultural operation declared by the U.S. Secretary of Labor to be particularly hazardous for employment of children below the age of 16.

Transportation

- In or about an airport landing strip and taxi or maintenance aprons.
- As an outside helper on a motor vehicle.

Operations

- To do welding of any kind.
- As loader or launchers for skeet or trap shooting.
- In any manufacturing or commercial warehouse.
- In processing plants.
- Cooking that is not in full view of the public.
- Baking.
- Loading or unloading goods to and from trucks.
- Using a ladder, scaffold or their substitutes.

Other

- To lift or carry, or otherwise personally care for, patients in hospitals or nursing homes.
- In walk-in meat freezers or meat coolers, except for occasional entrance.
- In any manufacturing or mining occupation.

Exceptions

- 17-year-old high school graduates,
- a minor employed by a business that is solely owned and daily supervised by one or both parents,
- a minor participating in a state-approved apprenticeship program or a program approved by the Minnesota Department of Education, or
- a minor may be employed at tasks away from or outside of the area of hazardous operation, equipment or materials.

Penalties

An employer who fails to comply with provisions of the Minnesota Child Labor Act may be subject to fines of \$250 to \$5000 per child and violation.

An employer who repeatedly violates the provisions of the Minnesota Child Labor Act or any other regulation, issued pursuant thereto shall upon conviction, thereof, be guilty of a gross misdemeanor.

An employer who is subject to (covered by) and fails to comply with the **Federal** Fair Labor Standards Act child labor provisions may be fined up to **\$10,000 per minor**.

Questions on Child Labor Standards?

Minnesota Department of Labor
Labor Standards Unit
443 Lafayette Road
St. Paul, Minnesota 55155
(651) 284-5005
www.dli.mn.gov

U.S. Department of Labor
Wage and Hour Division
Midland Square, Suite 920
331 Second Avenue South
Minneapolis, MN 55401
(612) 370-3371 or www.dol.gov

Other Employers' Requirements

Statement of Earnings

Employers are required to provide each employee with a written statement of earnings. This statement must be issued at the end of each pay period and may be in any form desired but must include:

- name of employee
- hourly rate of pay if applicable. (Compensation by methods other than hourly does not in itself excuse an employer from keeping required hour records and guaranteeing minimum wage and overtime.)
- total number of hours worked
- gross pay
- list of all deductions (e.g., taxes, insurance, union dues, other)
- net pay
- pay period ending date
- legal name of the employer and the operating name if different from legal name*

Personnel File

If an employee requests a copy of their personnel file in writing, an employer must provide a copy free of charge within 7 working days of the request if the file is kept within the state or within 14 days of the request if the file is kept out of state.**

Employment Statement

Employers with ten or more employees are required to provide a written and dated wage contract to the employee showing:

- Date work begins
- Rate of pay so that wages due may be readily computed
- Number of hours and days expected to be worked***

Wages Due upon Separation

All wages or commissions owed at the time of separation are due upon demand of the employee according to the following guidelines:

- A discharged employee may make demand for payment within 24 hours
- An employee who voluntarily quits is paid by the next payday*** unless there are less than 5 days between the last day of work and the pay period in which case wages are paid on the next payday as long as it does not exceed 20 days.

* Minn. Stat.181.032

** Minn. Stat. 181.961

*** Minn. Stat. 181.55

Posters

The mandatory state posters are listed below, along with a phone number as to where they can be obtained. Minnesota law requires they be displayed in a location where employees can easily see them (employee bulletin board, lunchroom, etc.). These documents provide safety, wage and age discrimination information and are listed below. A set may be requested at (651) 284-5042 or online at www.dli.mn.gov/LS/Posters.asp

Minnesota Department of Labor & Industry

Call: (651) 284-5005 or 1-800-DIAL-DLI (1-800-342-5354)

- “Safety & Health Protection on the Job” discusses safety and health regulations.
- “Minnesota Employees, You Are Entitled To” details state and federal minimum wage and overtime laws.
- “Minnesota Employees, Know Your Rights Under Minnesota and Federal Retirement Laws” explains retirement and age discrimination.
- “Employees’ Rights Under Minnesota Workers’ Compensation” explains what employees should do if they are injured at work.
- “Your Parental Leave Rights” details state law requiring employers to provide up to 6 weeks of unpaid job protected leave for birth or adoption of a child. Also up to 16 hours for school conferences or activities and sick leave for sick child.

Minnesota Department of Employment and Economic Development

- “Unemployed?” to help employees understand Unemployment Insurance Benefits is available on-line at www.uimn.org.

In addition to the posters required by the state, the U.S. Government requires the following be posted (where to obtain them is listed under each title):

- **“Equal Employment Opportunity is the Law”**

Equal Employment Opportunity Commission
Public Information Room 9010
1801 L Street Northwest
Washington, D.C. 20507
1-800-669-3362

Questions on Employers’ Requirements?

Minnesota Department of Labor and Industry
Labor Standards Unit
443 Lafayette Road
St. Paul, Minnesota 55155-4306
Phone: (651) 284-5005 or 1-800-DIAL-DLI (1-800-342-5354) | Online: www.dli.mn.gov

Appendix

U.S. Department of Labor

Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA) requires employers of 50 or more employees to provide up to 12 weeks of unpaid leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year and for 1250 hours over the previous 12 months. The law allows employers to exempt the highest paid ten percent of the workforce if granting leave would cause substantial and grievous economic harm to the employers.

Employers must grant leave to employees in connection with the birth, placement or adoption of a child, to care for a spouse, child or parent who has a serious health condition, or for a serious health condition that makes them unable to perform their job. Employees may be required to provide advance notice of the leave and medical certification as established by the FMLA and regulations of the U.S. Department of Labor.

Although the law does not require the employer to provide paid leave, in some cases certain kinds of paid leave may be substituted for unpaid leave. During the leave, employers must maintain group medical insurance coverage under the same terms the employer would have provided had the employee continued working. (Employers may in some cases recover premiums paid for maintaining health coverage from employees who do not return to work following the leave.) Upon return from FMLA leave, employees must be restored to their original or an equivalent position with equivalent pay, benefits and other employment terms.

The law does not supersede any state or local law which provides greater family or medical leave rights, nor does it affect greater leave rights provided under a collective bargaining agreement.

Also, employers may adopt policies more generous than those required by the FMLA.

Employers must post a notice, available from the U.S. Department of Labor, explaining employee rights and responsibilities under the law.

For further information contact:

U.S. Department of Labor
Wage and Hour Division
Midland Square, Suite 920
331 Second Avenue South
Minneapolis, MN 55401
(612) 370-3371
www.dol.gov

**U.S. Department of Labor
Wage and Hour Division
Fact Sheet No. ATL 93-22**

Hours Worked Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning what constitutes working time. The Fair Labor Standards Act requires that each employee must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount an employee should receive cannot be determined without knowing the number of hours worked.

Definition of “Employ”

By statute definition the term “employ” includes “to suffer or permit to work.” The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place. “Workday”, in general, means the period between the time on any particular workday at which such employee commences his principal activity or activities and the time on any particular workday at which he ceases such principal activity or activities. The workday may therefore be longer than the employee’s scheduled shift, hours, tour of duty, or time on the production line.

Application of Principles

Employees “Suffered or Permitted” to work: Work not requested but suffered or permitted to be performed is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may simply desire to finish an assigned task or he may wish to correct errors. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time and is compensable.

Waiting Time: Whether waiting time is time worked under the Act depends upon the particular circumstances. Generally the facts may show that the employee was engaged to wait, which is work time, or they may show he was waiting to be engaged, which is not work time. For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for alarms are working during their periods of inactivity. The employee has been “engaged to wait.”

On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home or leave a message where he can be reached is not working while on call.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in industry and promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Bona fide meal periods are not worktime. The employee must be completely relieved from duty for the purposes of eating regular meals. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.

Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep.

Lectures, Meetings and Training Programs: Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

1. Attendance is outside of the employee's regular working hours.
2. Attendance is in fact voluntary.
3. The course, lecture, or meeting is not directly related to the employee's job.
4. The employee does not perform any productive work during such attendance.

Travel Time: The principles, which apply in determining whether or not time spent in travel is working time, depends upon the kind of travel involved.

Home to Work Travel: An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is not work time.

Home to Work on a Special One Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special 1 day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer does not have to count the normal home to work time as hours worked.

Travel That is All in the Day's Work: Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Typical Problems

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers. This time must be counted as hours worked because the employee is not completely relieved from duty.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

**U.S. Department of Labor
Wage and Hour Division
Fact Sheet No. ATL 93-17**

Overtime Pay Requirements of the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the overtime principals of the FLSA.

Characteristics of “overtime”: An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Requirements: Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rate of pay. There is no limit in the Act on the number of hours employees, aged 16 and older, may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest as such.

Each Workweek Stands Alone: The Act applies on a workweek basis. An employee’s workweek is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted.

Time of Payment: Normally, overtime pay earned in a particular workweek must be paid on the regular payday for the pay period in which the wages were earned.

Regular Rate of Pay: The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer’s behalf, premium payments for overtime work and the premium portion that is not less than time and one-half the regular rate paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Regular Rate is a Rate Per Hour: Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in such cases the overtime pay due must be computed on the basis of the hourly rate derived from such earnings. This is done by dividing the total pay for employment (except the statutory exclusions) in any workweek by the total number of hours actually worked.

Employees Working at Two or More Rates: Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

Payments Other than Cash: Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or the fair value of such goods or facilities must be included in the regular rate.

Typical Problems

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$75 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$5.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$7.50 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$45.00 must be included in the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge the statutory obligation. For example, an employee may be hired to work a 44-hour workweek for a weekly salary of \$200.00. In this instance the regular rate is obtained by dividing the \$200.00 straight time salary by 44 hours, which results in a regular rate of \$4.55. The employee is then due additional overtime computed by multiplying the 4 overtime hours by one-half the regular rate of pay (\$2.275) or \$9.10.

Overtime Pay may not be waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time will also fail. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for the overtime worked.

Where to Obtain Additional Information: This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

**U.S. Department of Labor
Wage and Hour Division
Fact Sheet No. ATL 93-17**

Exemptions for Executive, Administrative, Professional, & Outside Sales Employees under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the exemption provided by Section 13(a)(1) of the FLSA and the significance of that exemption in applying the provisions of the FLSA.

Characteristics

Section 13(a)(1) of the FLSA exempts certain executive, administrative, professional, and outside sales employees from the minimum wage and overtime requirements of the FLSA. The special requirements that apply to each of these categories of employees are summarized below.

Executive Exemption

Applicable to employees who have management as their primary duty; who direct the work of two or more full time employees; who have the authority to hire and fire or make recommendations regarding decisions affecting the employment status of others; who regularly exercise discretion and judgment in their work; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to non-management functions (40% in retail and service establishments).

NOTE: In order to be considered “salaried”, an employee must receive their full salary for any workweek in which they perform any work. This rule applies to the three sections of this exemption that have salary requirements.

Administrative Exemption

Applicable to employees who perform office or non-manual work which is related to the management policies or general business operations of his employer or his employer’s customers, or perform such functions in the administration of an educational establishment; who regularly exercise discretion and judgment in their work; who either assist a proprietor or executive, perform specialized or technical work, or execute special assignments; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to work other than that described above (40% in retail and service establishments).

Professional Exemption

Applicable to employees who perform either work requiring advanced knowledge and education, work in an artistic field which is original and creative, or work as a teacher; who regularly exercise discretion and judgment; who perform work which is intellectual and varied in character the accomplishment of which cannot be standardized as to time; who receive a salary which meets the requirements of the exemption (except doctors, lawyers, and teachers); and who do not devote more than 20% of their time to work other than that described above.

Outside Sales Exemption

Applicable to employees who engage in making sales or obtaining orders away from their employer's place of business and who do not devote more than 20% of their time to work other than the making of such sales.

Typical Problems

Some problems and misconceptions which Wage and Hour investigations commonly find in the application of this exemption are:

- Employers without a formal sick leave policy docking salaried, exempt employees for time missed from work because of sickness.
- Employees not receiving full salary payments each week.
- Employees performing routine production type duties that seem related to general business operations but which have no bearing on setting of management policies.
- Employees who hold degrees performing jobs which are not professional in nature or to which the degree they hold is not applicable.
- Employers confusing job skills with the exercise of independent judgment and discretion.
- Employees placed on salary and classified as exempt without regard to duties or percentage of time spent in exempt duties.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor
Program Highlights
Fact Sheet No. ESA 91-3

Federal Child Labor Laws in Non-farm Jobs

The Fair Labor Standards Act of 1938 (FLSA), as amended, protects young workers from employment that might interfere with their educational opportunities or be detrimental to their health or well-being.

The FLSA applies to most of the workers in the U.S. It covers all workers who are engaged in or producing goods for interstate commerce or who are employed in certain enterprises.

Child Labor Standards for 16- and 17-Year-old Youths

Youths aged 16 and 17 may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor. Hazardous occupations include: working with explosives and radioactive materials; operating certain power-driven woodworking metalworking, bakery, and paper products machinery; operating various types of power-driven saws and guillotine shears; operating most power-driven hoisting apparatus such as nonautomatic elevators, fork lifts, and cranes; most jobs in slaughtering, meat packing, rendering plants, and the operation of power-driven meat processing machines when performed in wholesale, retail or service establishments; most jobs in excavation, logging, and sawmilling; roofing, wrecking, demolition, and shipbreaking; operating motor vehicles or working as outside helpers on motor vehicles; and most jobs in the manufacturing of bricks, tiles, and similar products.

Exemptions from some of the hazardous occupations orders apply for apprentices and students in vocational education programs.

Child Labor Standards for 14- and 15-Year-old Youths

Youths aged 14 and 15 may work in various jobs outside school hours under the following conditions: no more than 3 hours on a school day with a limit of 18 hours in a school week; no more than 8 hours on a non-school day with a limit of 40 hours in a non-school week; and not before 7 a.m. or after 7 p.m., except from June 1 through Labor Day, when the evening hour is extended to 9 p.m.

Workers 14 and 15 years of age may be employed in a variety of jobs: office work; various food service jobs, including cashiering, waiting on tables, washing dishes, and preparing salads and other food (although cooking is permitted only at snack bars, soda fountains, lunch counters, and cafeteria serving counters); sales work and other jobs in retail stores; errand and delivery work by foot, bicycle, and public transportation; dispensing gasoline and oil and performing courtesy services in gas stations; and most cleanup work.

Minors who are 14 and 15 years old may not work in the following jobs: manufacturing, mining, most processing work, and all occupations declared hazardous by the Secretary of Labor; operating or tending most power-driven machinery; public messenger service; and work connected with warehousing, storage, transportation, communications, public utilities, and construction (except office and sales jobs when not performed on transportation vehicles or on construction sites).

Youths under 14 may work only if their jobs are exempt from the child labor standards or not covered by the FLSA. Exempt work includes: delivery of newspapers to consumers; performing in theatrical, motion picture, or broadcast productions; and work in a business owned by parents of the minor, except in manufacturing or hazardous occupations.

All states have child labor laws. In instances when both State and Federal child labor laws apply, the law setting the more stringent standard must be observed.

Employer Records

Internal Revenue Service

Keep the following records for the IRS for four years.

Records you must keep for income tax withholding

1. Each employee's name, address, and Social Security number.
2. The total amount and date of each wage payment and the period of time the payment covers.
3. For each wage payment, the amount subject to withholding.
4. The amount of withholding tax collected on each payment and the date it was collected.
5. If the taxable amount is less than the total payment, the reason why it is less.
6. Copies of any statements furnished by employees relating to nonresident alien status, residence in Puerto Rico or the Virgin Islands, or residence or physical presence in a foreign country.
7. The fair market value and date of each payment of non-cash compensation made to a retail commission salesperson, if no income tax was withheld.
8. For accident or health plans, information about the amount of each payment.
9. The withholding allowance certificates (Form W-4) filed by each employee.
10. Any agreement between you and the employee on Form W-4 for the voluntary withholding of additional amounts of tax.
11. If necessary to figure tax liability, the dates in each calendar quarter on which any employee worked for you, but **not** in the course of your trade or business, and the amount paid for that work.
12. Copies of statements given to you by employees reporting tips received in their work, unless the information shown on the statements appears in another item on this list.
13. Requests by employees to have their withheld tax figured on the basis of their individual cumulative wages and any notice that the request was revoked.
14. The Forms W-5, Earned Income Credit Advance Payment Certificate, and the amounts and dates of the advance payments.

Records you must keep for social security and Medicare taxes

1. The amount of each wage payment subject to Social Security tax.
2. The amount of each wage payment subject to Medicare tax.
3. The amount of Social Security and Medicare taxes collected for each payment and the date collected.
4. If the total wage payment and the taxable amount differ, the reason why they do.

Records you must keep for Federal Unemployment (FUTA) Tax

1. The total amount paid to your employees during the calendar year.
2. The amount of compensation subject to the unemployment tax and, if it differs from the total compensation why it differs.
3. The amount you paid into the state unemployment fund.
4. Any other information required to be shown on Form 940 .

Minnesota Department of Revenue

Keep the following records for the MDOR for four years:

1. The same records that are required for the IRS for income tax withholding
2. Form MW-R, Reciprocity Exemption/Affidavit of Residency filed by an employee.

Minnesota Department of Employment and Economic Development – Unemployment Insurance Program

Keep the following records for UIMN for eight years prior to the current year:

1. Each worker's name (first, last and middle initial), address and Social Security number
2. The rate of pay for each worker
3. The actual days and number of hours worked
4. The place where the services were performed
5. The gross amount of earnings
6. The value of any remuneration other than cash (e.g. meals, lodging, etc.)
7. Any special payments (e.g. bonuses, tips, etc.)

Minnesota Department of Labor and Industry

The Minnesota Fair Labor Standards Act sets record keeping requirements for all covered employees.

Every employer must keep certain records about each worker who is entitled to minimum wage and overtime pay under the Minnesota Fair Labor Standards Act. The Act requires no particular form for the records.

All it requires is that the records contain the employee's name, last known address, occupation, rate of pay, Social Security number, hours worked, and the wages paid each pay period. Hour records must show beginning and ending hours with an a.m. and p.m. designations with total daily hours and total weekly hours regardless of the pay period length. The law requires this information to be kept for a period of not less than three years.

Free Publications and Forms

Federal Publications

Internal Revenue Service

Publication 1, Your Rights as a Taxpayer

Publication 15, Employer's Tax Guide

Publication 15A, Employer's Tax Guide Supplement

Publication 51, Agricultural Employer's Tax Guide

Publication 505, Tax Withholding and Estimated Tax

Publication 509, Tax Calendars

Publication 535, Business Expenses

Publication 910, Guide to Free Tax Services and Other Publications

Publication 919, Is My Withholding Correct

*Most publications are revised annually. See IRS Publication 910 for a complete publication list.

Social Security Administration

Publication 05-10010, Your Taxes...What They're Paying For And Where The Money Goes

Publication 05-10059, An Employer's Investment

United States Citizenship and Immigration Services, USCIS

M-274, Handbook for Employers

State Publications

Minnesota Department of Revenue

Minnesota Income Tax Withholding Instructions and Tax Tables

Withholding Tax Fact Sheets

- 2 Minnesota Specifications for Submitting Forms W-2 Electronically (EFW2) for 2007
- 2a Minnesota Specifications for Submitting Forms W-2 and 1099 Electronically (e-File Minnesota) for 2007
- 3 Agricultural Workers
- 4 Fairs and Special Events
- 5 Third Party Bulk Filers
- 6 Corporate Officers
- 7 Household Employees
- 8 Independent Contractor or Employee?
- 9 Definition of Wages
- 10 New Employer Guide
- 11 Nonresident Entertainer Tax
- 12 Surety Deposits for Out of State Contractors
- 13 Construction Contracts with a State and Local Government Agencies
- 14 Step-by-Step Guide to Filing and Paying Electronically for Quarterly Filers
- 15 Step-by-Step Guide to Paying Electronically
- 16 Step-by-Step Guide to Filing and Paying Electronically for Annual Filers
- 17 Step-by-Step Guide to Filing Amended Returns

Minnesota Department of Employment and Economic Development – Unemployment Insurance Program

- Minnesota Unemployment Information Handbook (information on UI benefits issues)
- The *Employer Handbook*
- The *Employer User Guide*
- Independent Contractor or Employee? (Tri-fold brochure – distributed at class)
- Required Poster - “Unemployed?” to help employees understand UI Benefits

All are available in electronic format on the DEED Web site at: www.uimn.org

Minnesota Department of Employment and Economic Development – Small Business Assistance Office

- “A Guide to Starting a Business in Minnesota” (also available on CD)
- “An Employer’s Guide to Employment Law Issues in Minnesota” (also available on CD)

To get a free print copy of either of the two publications above contact:

MN Department of Employment
and Economic Development
Small Business Assistance Office
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

Telephone: (651) 259-7476

Toll Free: 1-800-310-8323

Website:

www.positivelyminnesota.com/Data_Publications/Publications/All_Other_DEED_Publications

Minnesota Department of Labor and Industry

Workplace Posters - Phone: (651)-284-5076 or 1-800-DIAL-DLI (1-800-342-5354)

Online: www.dli.mn.gov/LS/Posters.asp

- “Safety & Health Protection on the Job” discusses safety and health regulations.
- “Minnesota Employees, You Are Entitled To” details state and federal minimum wage and overtime laws.
- “Minnesota Employees, Know Your Rights Under Minnesota and Federal Retirement Laws” explains retirement and age discrimination.
- “Employees’ Rights Under Minnesota Workers’ Compensation” explains what employees should do if they are injured at work.
- “Your Parental Leave Rights” details state law requiring employers to provide up to 6 weeks of unpaid job protected leave for birth or adoption of a child. Also up to 16 hours for school conferences or activities and sick leave for sick child.
- Other Phone numbers: OSHA 651-284-5050, Workers Compensation 651-284-5032.

Federal Forms

Internal Revenue Service

Form SS-4, Application for Employer Identification Number
Form W-2, Wage and Tax Statement
Form W-3, Transmittal of Wage and Tax Statements
Form W-4, Employee's Withholding Allowance Certificate
Form W-5, Earned Income Credit Advance Payment Certificate
Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
Form 941, Employer's Quarterly Federal Tax Return
Form 943, Employer's Annual tax Return for Agricultural Employees
Form 944, Employer's Annual Federal Tax Return
Form 945, Annual Return of Withheld Federal Income Tax
Form 1096, Annual Summary and Transmittal of US Information Returns
Form 1099-MISC, Statement for Recipients of Miscellaneous Income
Form 8850, Prescreening Notice and Certification Request

Social Security Administration

Form SSA-7004-SM, Request for Earnings and Benefit Estimate Statement

U.S. Immigration and Naturalization Service

Form I-9, Employment Eligibility Verification Form

State Forms

Minnesota Department of Revenue

Form ABR, Application for Business Registration
Form MW5, Withholding Tax Deposit Form
Form MWR, Reciprocity Exemption/Affidavit of Residency
IC134 Withholding Affidavit for Contractors
Surety Forms (SDD, SDE, and SDR)
Non-Resident Entertainer Tax forms (ETA, ETD, ETR)

All of these forms are available in electronic format on the MDOR
Web site at: www.taxes.state.mn.us

Minnesota Department of Employment and Economic Development - Unemployment Insurance Program

UIMN no longer accepts paper forms from employers. All Minnesota UI business can be completed via the self-service applications on the website at www.uimn.org or by touch-tone telephone at 651-296-6141

Welfare-to-Work and Work Opportunity Tax Credit Information

*ETA 9061, Individual Characteristics Form

*ETA 9062, Conditional Certification Form

*The US Department of Labor produces these forms. However, they pertain to the Welfare-to-Work and Work Opportunity tax credits which the Minnesota Department of Employment and Economic Development administers. These forms and information about applying for the tax credits are available in electronic format on the DEED Web site at:

www.positivelyminnesota.com/Business/Starting_a_Business/Find_Workers/Tax_Credits_for_Hiring_Certain_Workers_4.aspx

Telephone Numbers and Office Locations

Internal Revenue Service

Question/Answer

General Information

1-800-829-1040

Business Specialty Line

1-800-829-4933

Forms Only

1-800-829-3676 (FORM)

TTY

1-800-829-4059

Tele-tax (Recorded tax and refund information)

1-800-829-4477

Walk-in service in the Twin Cities metropolitan area

To request information in person and pick up forms or publications Monday through Friday, 8:00 a.m. to 4:30 p.m.:

Minneapolis IRS

250 Marquette Avenue

Minneapolis, MN 55401

St. Paul IRS

30 East 7th Street

St. Paul, MN 55101

Bloomington IRS

1550 American Blvd E, Ste 700

Bloomington, MN 55425

Walk-in service in the Greater Minnesota area

Hours for walk-in service in the Greater Minnesota area will vary during the year. Taxpayers may phone 1-800-829-1040 to request hours of service.

Duluth IRS

Federal Building

515 W First St, Rm 105

Duluth, MN 56801

Rochester IRS

21 SW Second St

Rochester, MN 55902

Mankato IRS

1921 Excel Drive

Mankato, MN 56001

St. Cloud IRS

3800 8th St N

St. Cloud, MN 56303

Social Security Administration

1-800-772-1213

U.S. Department of Labor

(651) 370-3371

United States Citizenship and Immigration Services (USCIS)

Forms order

1-800-870-3676

Questions

1-800-375-5283

Minnesota Department of Revenue

To apply for a Minnesota tax ID number:

Go to our website at www.taxes.state.mn.us and click on “Register for a Minnesota tax ID number” on the e-Services menu. If you don’t have Internet access, call our Registration Services office at (651) 282-5225 in the Metro area, or 1-800-657-3605, send an e-mail to: Business.Registration@state.mn.us or simply fax your completed *Application for Business Registration* form to (651) 297-2265.

Minnesota Taxpayer Education Group (Sales and Use Tax classes):

(651) 297-4213, or by e-mail at: mdor.mbe@state.mn.us

For answers to Withholding Tax related questions:

(651) 282-9999 in the Metro area, 1-800-657-3594 in Greater Minnesota, or by e-mail at: withholding.tax@state.mn.us

For answers to Corporation, Partnership and S-Corporation Tax related questions:

(651) 556-3075, or by e-mail at: businessincome.tax@state.mn.us

For answers to Sales and Use Tax related questions:

(651) 296-6181 in the Metro area or 1-800-657-3777 in Greater Minnesota, or by e-mail at: salesuse.tax@state.mn.us

For answers to Individual Income Tax questions:

(651) 296-3781 in the Metro area or 1-800-652-9094 in Greater Minnesota, or by e-mail at: indinctax@state.mn.us

Minnesota forms are available online at: www.taxes.state.mn.us/taxes/current_forms.shtml

TTY:

Call 711 for Minnesota Relay

Minnesota Department of Employment and Economic Development (DEED)

UI Employer Contacts

Minnesota Department of Employment and Economic Development
UI Customer Service Center
1st National Bank Building
332 Minnesota Street - Suite E200
St Paul, MN 55101-1351

Telephone: (651) 296-6141 ❖ Fax: (651) 297-5283 ❖ E-mail: ui.mn@state.mn.us

Information on Welfare-to-Work & Work Opportunity Tax Credits

WOTC Tax Credit Unit
Department of Employment and Economic Development
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

Telephone: (651) 259-7507 ❖ Toll Free: 1-888-234-5521 ❖ E-mail: ui.mn@state.mn.us

Small Business Development Centers

SBDC
Department of Employment and Economic Development
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

Telephone: (651) 259-7420 ❖ website: www.mnsbdc.com

Minnesota Department of Labor and Industry

Labor Standards Division

Child Labor Standards, Minimum Wage, Overtime - (651) 284-5005

Workers' Compensation Division

Customer Assistance - 1-800-342-5354 or (651) 284-5032

Minnesota Department of Human Services

Child Support Enforcement Division

General Questions

(651) 431-4551 or toll free 1-800-657-3890

Minnesota Child Support Enforcement Division
444 Lafayette Road
St. Paul, MN 55155-3846

New Hire Reporting

(651) 227-4661 (Metro)
1-800-672-4473 (Greater Minnesota)
FAX (651) 227-4991 (Metro)
FAX 1-800-692-4473 (Greater Minnesota)

Minnesota New Hire Reporting Center
PO Box 64212
St. Paul, MN 55164-0212

Minnesota Workers' Compensation Insurers' Association

(MWCIA)

7701 France Avenue South-Suite 450
Minneapolis, MN 55435

Marie Johnson – Member and Customer Services
Phone: 952-897-6410 ❖ e-mail: marie.johnson@mwcia.org

Business Planning Center, Programs and Services

2324 University Avenue West
Midtown Commons Building, Suite 112
St. Paul, MN 55114-1843

Telephone: 651-209-1884 ❖ website: www.score-stpaul.org/bpc.htm

The Business Planning Center (BPC) in St. Paul offers a variety of programs to small business owners and aspiring entrepreneurs. In addition to their core program of assisting individuals developing their own business plan, the BPC programs include on-site counseling, volunteer bankers, lawyers and loan information seminars.

Programs include:

- The BPC core program offers the latest business plan software, marketing plan software, on-site computers to create your own plans and an extensive library of books and publications to help entrepreneurs. Sample business plans are available to study.

-
- On-site counseling is available from members of the SCORE Association, Counselors to America's Small Business. Counselors are at the center every day and will meet with individuals on a one-on-one basis.
 - A free Small Business Loan Seminar explaining SBA's loan programs is offered each Thursday from 12:30 to 2:00 p.m. Attendees will receive sample loan applications, a business start-up kit, and information on how to apply for a loan.
 - Each Thursday from 2:00 to 6:00 p.m., a small business lender is available to answer questions and counsel entrepreneurs and aspiring entrepreneurs. Different Twin Cities area banks rotate their time to have a loan officer available each week to review business plans and discuss the loan application process.
 - On Tuesdays from 4:00 to 7:00 p.m., the BPC has partnered with Legal CORPS to provide legal advice and answer legal questions for entrepreneurs and aspiring entrepreneurs.
 - A Spanish-speaking collaborator is available on Tuesday and Wednesdays from 9:00 a.m. to 4:00 p.m. to help with general information.

No appointment is necessary and there is no charge. For more information about any of the BPC programs or services, call 651-209-1884.

The BPC is open 9:00 a.m. to 4:00 p.m. on Monday, Wednesday and Friday. The hours are 9:00 a.m. to 7:00 p.m. on Tuesday and Thursday.

All services of the BPC are free and confidential. The BPC is operated by SBA resource partners in the Twin Cities area.

Websites

Internal Revenue Service

www.irs.gov

Electronic Federal Tax Payment System

www.eftps.com

Social Security Administration

www.socialsecurity.gov/employer

U.S. Department of Labor

www.dol.gov

U.S. Citizenship Immigration Services

www.uscis.gov

Minnesota Department of Revenue

www.taxes.state.mn.us

Minnesota Department of Employment and Economic Development

Unemployment Insurance Program: www.uimn.org

Main Department website: www.PositivelyMinnesota.com

Minnesota Department of Human Services

New Hire: www.mn-newhire.com

General Information: www.dhs.state.mn.us

Minnesota Department of Labor and Industry

www.dli.mn.gov

Small Business Administration

www.sba.gov

One Stop Link to Government Agencies

www.USA.gov

Employment Tax Due Dates

DEPOSITS

Use **Form 8109**, Federal Tax Deposit (FTD) Coupon to make federal deposits at a qualified depository bank.

Use **Form MW-5**, Withholding Tax Deposit Form to mail state withholding deposits to the Minnesota Department of Revenue.

Monthly Depositors - Deposit employment taxes by the 15th day of the following month.

Semiweekly Depositors

- If your payroll days are Wednesday, Thursday and/or Friday deposit by the following Wednesday.
- If your payroll days are Saturday, Sunday, Monday and/or Tuesday deposit by the following Friday.

Exceptions

- If you accumulate less than \$2,500 in *federal* tax liabilities during a quarter, you may pay when you file Form 941.
- If you accumulated less than \$1500 in *state* tax withholding in the *previous* quarter, you may pay the withholding for the current quarter when you file your return.
- If the Minnesota Department of Revenue has notified you that you are an annual filer for state income tax withholding purposes, you are required to make a deposit each time your state withholding tax exceeds \$500. These deposits are due by the last day of the month following the month in which you exceeded \$500.

QUARTERLY RETURNS

The following returns are due by **April 30, July 31, October 31 and January 31**:

- **Form 941**, Employer's Quarterly Federal Tax Return *to the Internal Revenue Service*
- **Employer's Quarterly Withholding Tax Return** *to the Minnesota Department of Revenue* electronically by Internet or touch-tone phone for the **first three** quarters (the fourth quarter/annual reconciliation is due the end of February)
- **Employer's Quarterly Wage Detail Report** *to the Minnesota Department of Employment & Economic Development* electronically via Internet or touch-tone phone

ANNUAL RETURNS

By **January 31** you must:

- file **940** Employer's Annual Federal Unemployment (FUTA) Tax Return with *the IRS*
- send **1099-MISC** Miscellaneous Income *to the recipient*
- send **W-2** Wage & Tax Statement *to the employee*

By **the end of February** you must:

- file **Year-End Withholding Return/Reconciliation** electronically *with the Minnesota Department of Revenue (this return is for fourth quarter and a reconciliation of the year)*
- file **Annual Withholding Return/Reconciliation** for **Annual** filers electronically *with the Minnesota Department of Revenue*
- send **Form 1096**, Annual Summary and Transmittal of US Information Returns **with 1099's** *to the IRS*
- send **Form W-3**, Transmittal of Wage and Tax Statements **with W-2s** *to the Social Security Administration*
- send State copies of **Form W-2** and all **Information Returns that show Minnesota withholding tax** *to the Minnesota Department of Revenue*