Hospitality MINNESOTA
THE LODGING, RESTAURANT, RESORT AND CAMPGROUND ASSOCIATION

2025 LAW REVIEW

P&K | Peters Kappenman
The Lawyers for Employers

EXCLUSIVELY FOR ASSOCIATION MEMBERS

TABLE OF CONTENTS

Labor and Employment Laws and Regulations

It is important to understand that federal, state and sometimes local labor laws impact a hospitality business. **In all cases, when two laws apply, the one most beneficial to the employee prevails.** Therefore, even if an establishment falls under federal guidelines, the state law must be followed if it is more beneficial to the employee and vice versa.

Most hospitality businesses qualify for federal jurisdiction because of being in interstate commerce. Your business needs to pay the higher of the Minnesota or federal minimum wage and follow other federal labor laws, for example, if any of the following criteria apply:

- accept credit or debit cards;
- have vendors or suppliers from another state;
- have guests or customers from other states;
- market online in ways that communicate with or attract guests from other states; or
- have employees that commute from other states for work in your business.

Virtually all hospitality businesses meet some, if not all of these criteria. Remember: the provisions of Minnesota law apply in cases where they are more favorable to an employee than federal law.

Additional Resources for Employment Law Issues

- **Minnesota Department of Labor and Industry:** Helpful fact sheets, listing contacts for specific questions.
- **Minnesota Department of Employment and Economic Development:** One helpful publication is *An Employer's Guide to Employment Law Issues in Minnesota*.
- **Unemployment Insurance Issues:** Select "Employers & Agents," then "Employer Handbook" under Quick Links.

Age of Workers Where Liquor is Served

Minnesota law requires that servers and bartenders must be at least 18 years old in an area where liquor, wine or strong beer are served and/or consumed. Minors who have reached the age of 16 may be employed to perform hosting, busing or dishwashing work in those rooms or areas of a restaurant, hotel, motel or resort where the presence of intoxicating liquor is incidental to food service or preparation. However, minors who have not reached the age of 16 may not work after 11:00 PM on evenings before school days.

If minors under age 18 are employed for busing or hosting, care needs to be taken that they do not deliver alcoholic beverages, take orders for drinks or be in any way involved in the sale or service of liquor, wine or strong beer. The law is different when 3.2 beer is served. Minors who have reached the age of 16 may be employed to perform busing, dishwashing, or hosting services or to be a waiter or

waitress in rooms or areas where the presence of 3.2 percent malt liquor is incidental to food service or preparation.

The law also provides that minors who have reached the age of 16 may be employed to provide musical entertainment in those rooms or areas where the presence of intoxicating liquor and 3.2 percent malt liquor is incidental to food service or preparation.

If an establishment employs workers under the age of 16 in the kitchen as dishwashers or in other roles, they may not lawfully handle glassware used for the service of alcohol. Minors under the age of 16 may not work after 9:00 PM (during the school, after 7:00 PM), and may work no more than 40 hours per week or 8 hours in a 24-hour period.

Affordable Care Act (ACA)

The Patient Protection and Affordable Care Act," or ACA, is extremely complicated, and for the purposes of this document we will only touch on some key themes of the law that may be important to you.

The ACA provides generally that:

- Adult dependent children can be covered on their parent's plans until age 26.
- No lifetime and limited annual limits on essential health benefits are allowed.
- No pre-existing condition exclusions are allowed.
- Non-grandfathered plans cover 100% of preventive care without a co-pay.
- No Flexible Spending Account reimbursement for over-the-counter drugs.
- Early Retiree Reinsurance Program funds can still be used.

ACA Employer Mandate: Employers with 50 or more full-time-equivalent employees are required to offer health care coverage that meets certain "affordability" and "minimum value" standards to 95% of their employees (and their dependents up to age 26).

What is the Affordability and minimum value standard? Under the ACA, a plan meets the minimum value standard if the employer covers at least 60% of the allowed cost of benefits and is affordable if the employee share doesn't exceed 9.83% of the employee's household income. Since employers may not know the household income of their employees, the IRS has established a "safe harbor" for an employer to measure affordability using the employees W-2 income from that employer. If you have a "grandfathered plan" (employer plans that were in effect on or before March 23, 2010), you may not have the same requirements regarding cost-sharing; consult your insurance broker or consultant.

How does common ownership affect businesses with multiple locations? For businesses that operate several locations under common or related ownership, the IRS may consider them one entity

for the purposes of counting 50 or more full-time-equivalent employees. Because these rules can be complex, we recommend that owners talk to their tax advisors and/or insurance broker or consultant.

Who's considered a full-time employee? Under the ACA, a full-time employee is a person who works 30 hours per week on average in any given month (or 130 hours in a calendar month). The Treasury Department has suggested that employers can use an up to 12-month "look back" period to see if existing employees who work variable hours meet the definition of full-time.

Are there different rules for seasonal businesses or businesses with a seasonal peak? Yes: The hours worked by **seasonal workers are counted** (in addition to full-time employees and part-time equivalents) to determine whether you have at least 50 full-time employee equivalents and are therefore subject to the employer mandate. For purposes of determining whether you are a large employer, seasonal workers are workers who perform labor or services on a seasonal basis (*i.e.*, exclusively performed at certain seasons or periods of the year and which, by its nature, may not be continuous or carried on throughout the year). There is an exemption from the employer mandate that says you would not be considered to employ more than 50 full-time employees if:

- your workforce only exceeds 50 full-time employees for 120 days or fewer, during the calendar year; and
- the employees in excess of 50 who were employed during that 120-day (or shorter) period were seasonal workers.

If an employer, using the formula above, is determined to have 50 or more full-time equivalents, they must provide benefits for all of their employees that work, on average, 30+ hours per week not counting seasonal employees. There is a difference in definitions between "seasonal employer" and "seasonal employee." Please ask your insurance agent or tax advisor for the details.

There are a number of requirements that will affect your business; in most cases the number of employees is not a factor. These include:

Summary of Benefits and Coverage Explanation: If your company provides health insurance coverage to employees, you are required to provide an "easy to understand" summary and explanation on a form approved by the U.S. Department of Health and Human Services. Health plan providers and brokers are expected to assist employers with meeting this requirement.

The ACA requires employers to report the cost of coverage under an employer-sponsored group health plan. Reporting the cost of health care coverage on the Form W-2 does not mean that the coverage is taxable. The value of the employer's excludable contribution to health coverage continues to be excludable from an employee's income, and it is not taxable. This reporting is for informational purposes only and will provide employees useful and comparable consumer information on the cost of their health care coverage.

Employers that provide "applicable employer-sponsored coverage" under a group health plan are subject to the reporting requirement. This includes businesses, tax-exempt organizations, and federal, state and local government entities (except with respect to plans maintained primarily for members of the military and their families). However, federally recognized Indian tribal governments are not subject to this requirement.

Employer plans that were in effect on or before March 23, 2010, are called **"grandfathered plans."** These plans are exempt from some of the coverage requirements. Check carefully with your plan provider or broker before making any changes in your plan that may cause the loss of grandfathered status. Premiums may be higher for non-grandfathered plans.

The law requires employers to **provide 60-days' notice** of most changes to their plans. Ask your plan provider or broker how this requirement applies to your business.

The maximum contribution to a Flexible Spending Account for 2024 is $3,200. Up to $640 may be carried over to the following year if unspent in the current plan year.

Insurers are required to **rebate insurance premiums** to "enrollees" if the "medical loss ratio" is less than 80% for small employers and 85% for large employers. The medical loss ratio is the percentage of your premium spent on actual clinical services and activities to improve health care quality.

Employers are required to provide written notice to all employees about the state-based "exchanges," a primary marketplace for individuals and small businesses to buy insurance (in Minnesota this is called MNsure). Information is available at: **www.mnsure.org**. You should add this required notice to your new employee hiring paperwork. More information, including updates and changes, is available online at: **www.irs.gov/Affordable-Care-Act/Employers**.

Reporting requirements: There are significant reporting requirements for employers under the ACA. The IRS outlines some of the basics in this FAQ: **https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-reporting-of-offers-of-health-insurance-coverage-by-employers-section-6056** We recommend talking to your insurance broker/consultant and your tax professional to make sure you understand your business' specific reporting requirements.

Small Business Tax Credit: Employers with fewer than 25 employees who choose to offer qualifying coverage may be eligible for a tax credit of up to 50% of premium expenses if coverage is purchased from the state health insurance exchange. The IRS has detailed information about the credit: **https://www.irs.gov/affordable-care-act/employers/small-business-health-care-tax-credit-and-the-shop-marketplace**

Health Reimbursement Arrangements (HRAs): Changes to the ACA now allow employers to set up tax free accounts that workers can tap to pay for premiums or medical expenses and purchasing

individual coverage. There are affordability considerations and other requirements associated with the HRAs, so we recommend talking to an insurance broker or specialist (as well as your tax professional) about the pros and cons for your specific business. Additional information to get started can be found at: **https://www.healthcare.gov/small-businesses/learn-more/individual-coverage-hra/**

On March 22, 2024, on the ten-year anniversary of ACA marketplaces, the U.S. Department of Health and Human Services issued four reports summarizing ten years of enrollment data and the impact of the ACA on American healthcare. These reports and more information can be found at: **https://www.hhs.gov/about/news/2024/03/22/celebration-10-years-aca-marketplaces-biden-harris-administration-releases-historic-enrollment-data.html**

Americans With Disabilities Act (ADA) and Minnesota Human Rights Act (MHRA) Employment Provisions

The employment rules of the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA) require employers to make a "reasonable accommodation" to the needs of a qualified worker with a disability, unless this poses an undue hardship. In general, an accommodation is any change in the work environment or in the way things are usually done that enables an individual with a disability to enjoy equal employment opportunities and benefits. An accommodation is not required unless it is reasonable – that is, if it does not impose an undue hardship (*i.e.*, an action that is unduly costly, extensive, substantial, disruptive or that will fundamentally alter the nature of the services offered) on the employer.

The MHRA was amended in 2021 to clarify that to determine an employee's appropriate accommodation, an employer is required to "initiate an informal, interactive process with the individual with a disability in need of the accommodation[,]" which "should identify the limitations resulting from the disability and any potential reasonable accommodations that could overcome those limitations." Further, in determining whether a potential accommodation would pose an undue hardship for the employer, the MHRA identifies an employer's "documented good faith efforts to explore less restrictive alternatives[]" as a relevant factor.

The MHRA was amended in Minnesota's 2024 legislative session to expand the definition of a disabled person. Previously, a disabled person was defined as a person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Following the 2024 amendment, the definition of a disabled person now also includes a person with an impairment that is episodic or in remission and would materially limit a major life activity when active.

The MHRA was amended in the Minnesota 2024 legislative session to expand the definition of harassment. Prior to the amendment, harassment was defined as sexual harassment. The definition expanded harassment under any protected group.

In 2024, the MHRA also expanded the definition of "familial status". Previously, the MHRA was limited to minor children living with the employee. After the amendment, familial status was expanded to include vulnerable adults who live with the employee.

The Equal Employment Opportunity Commission is responsible for enforcing the ADA employment rules and there are significant financial penalties for violations. There are also tax credits for hiring certain workers with disabilities. For more information, contact: Equal Employment Opportunity Commission at (800) 669-4000 or **https://www.eeoc.gov/employers**.

More detailed information on the Commission's enforcement guidance can be found at: **https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada**

For ADA requirements related to accessibility of facilities by the public including barrier removal and accommodations, see the Hospitality Legal Issues section on page 60.

Background Checks

Employers are required to perform background checks for certain categories of employment. Some examples include security guards, residential apartment managers, home health-care workers and a number of other occupations. In addition to required background checks, employers should perform background checks appropriate to the job for which the applicant is applying. Hotels and resorts are increasingly requiring pre-employment background checks for employees who have unsupervised access to guest rooms. Other employers may wish to have background checks for employees who have unsupervised access to cash or who have accounting responsibilities. The liquor license process in most communities requires a background check for managers and owners of licensed businesses.

To avoid discrimination claims, an employer who performs background checks should be able to justify the inquiry and should be consistent in requiring a check of all newly hired employees or of applicants at the time a job offer is made. The Minnesota Human Rights Act generally prohibits employers from seeking and obtaining information from any source that pertains to an individual's protected class for making a job decision. The list of protected classes under the MHRA is broad and includes the following: race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age. Employers should not ask anything during a background check that cannot be asked of the applicant directly. Applicants or employees should be informed that a

background check will be performed and should sign an authorization. Although some employment applications include this information, the Fair Credit Reporting Act requires that the notification and authorization be separate from an employment application.

The Minnesota "Ban the Box" law is designed to provide job candidates with an arrest or conviction with more opportunities to be evaluated on their skills and experience when applying for positions with private employers. Specifically, this law prohibits employers from inquiring into or requiring the disclosure of, an employment applicant's criminal record or history, until the applicant has been selected for an interview by the employer (or, if there is no interview, before a conditional offer of employment has been made). According to the National Employment Law Project, 1 in 4 Americans have either an arrest or conviction on their record, in most cases for nonviolent offenses. This law offers the vast majority of these individuals a second chance at an opportunity for employment.

For additional information about criminal background checks, visit:
https://mn.gov/mdhr/employers/criminal-background/

Lie Detector Tests Limited: Employers may not solicit or require a current or prospective employee to take a lie detector (or polygraph) test. If an employee requests to take a lie detector test, the employer is required to inform the employee that taking such a test is voluntary and may not disclose that the employee took such a test or the results of such a test except to the employee or any persons authorized by the employee to receive the results. (*See* Minn. Stat. §§ **181.75** and **181.76**)

Also see the section on Employment Applications/Ban the Box on page 22.

Breaks/Rest Periods

If a rest period is given and it is less than 20 minutes in length, it shall be considered as hours worked and the employee must be paid for the time. An employee is not entitled to extra compensation if breaks are not given, nor is an employee allowed to accumulate unused break time for purposes of altering his or her work schedule.

Minnesota state law requires an employer to permit each employee adequate time from work within each four consecutive hours of work to utilize the nearest convenient restroom and sufficient time to eat a meal for employees who work eight or more consecutive hours.

The rest break law was amended in 2025. Effective January 1, 2026, an employer must allow an employee a rest break of at least 15 minutes or enough time to utilize the nearest convenient restroom, whichever is longer, within each four (4) consecutive hours of work.

Also see the section on Meals on page 30 and on Nursing Mothers on page 35.

Child Labor Laws

There are restrictions on both work hours and certain types of jobs that minors under 18 can perform. Employers who violate the Child Labor Standards may be subject to a penalty ranging from $250 to $5,000 for each minor illegally employed. The exceptions to this are for 17-year-old high school graduates, minors who are employed by a business that is solely owned and daily supervised by a parent, or minors being trained in a state-approved apprenticeship program or training program approved by the Division of Vocational-Technical Education, Minnesota Department of Education. Contact the following for more details on child labor laws:

- **Minnesota Department of Labor and Industry: www.dli.mn.gov/business/employment-practices/child- labor-laws**
- **U.S. Department of Labor: www.dol.gov/general/topic/youthlabor**

Minimum Age of Workers: A minor under 14 years of age may not be employed except: as a newspaper carrier, if at least 11 years old; in agriculture, if at least 12 years of age and, with parent or guardian consent; as an actor/actress or model; to perform home chores or baby sit; as a youth athletic program referee, if at least 11 years of age and less than 14 years of age; or for minors that are employed by a business that is solely owned and daily supervised by one or both parents.

Work Hours of 14- and 15-Year-Olds: ***Federal:*** Federal law limits minors under 16 to work between 7 a.m. and 7 p.m. except from June 1 through Labor Day, when nighttime work hours are extended to 9 p.m. Fourteen- and 15-year-olds are also limited to no more than three hours on a school day and not more than 18 hours in a school week. They cannot work more than eight hours on a non-school day or more than 40 hours a week in non-school weeks. These restrictions apply even if the youth does not attend school. (There are some exceptions to these if the individual is enrolled in an approved work experience and career exploration program.)

State: Minors under 16 years of age may not work before 7 a.m. or after 9 p.m. under the Minnesota Child Labor Act. They are limited to no more than eight hours in a 24-hour period or more than 40 hours a week. A special permit is required for minors under 16 years of age to work on school days during school hours. There are also limitations on the types of jobs that can be performed by a minor. (Parental permission cannot override these work hours for 14- or 15-year-olds.)

Work Hours of 16- and 17-Year-Olds: ***This state regulation is stricter than federal law; therefore, it applies to ALL employers in Minnesota.*** Employers are required to obtain proof of age prior to employing minors (either a copy of a birth certificate, a driver's license, an age certificate from school, or a United States Department of Homeland Security Citizenship and Immigration Services Employment Eligibility Verification Form I-9.) Minors ages 16 and 17 may not work after 11 p.m. on evenings before school days or before 5 a.m. on a school day. However, with written permission from

an employee's parent or guardian, these minors may work until 11:30 p.m. or start at 4:30 a.m. This law does not apply when school is not in session, on Friday or Saturday nights, or to 16- and 17-year-olds who have dropped out of school.

Work Restrictions: ***Federal*****:** Workers 14 and 15 years of age **may** be employed in various hospitality jobs, including cashiering, waiting on tables, busing tables, washing dishes and preparing salads and other food. Fourteen and 15-year-olds **may not** work in freezers and meat coolers (except on a momentary basis); load or unload goods to and from trucks, railroad cars or conveyers; and operate or tend most power-driven machinery including food slicers, grinders, food choppers & cutters and baking types of machinery including dough mixers. Cooking and baking are also prohibited, although cooking is permitted at snack bars, soda fountains, lunch counters and cafeteria serving counters as long as they are within full view of the customers. There are also a variety of other jobs declared hazardous by the U.S. Secretary of Labor. Teens who are employed by their parents and are exempt from the child labor regulations are NOT exempt from engaging in any occupation that is declared hazardous.

Workers under age 18 **may not** clean or use power-driven meat and food slicers, operate power-driven bakery machinery, drive an automobile to make deliveries or put cardboard boxes into a compactor/baler, to highlight a few restrictions of interest to our hospitality industry. Relative to fryers, according to the state branch of the U.S. Department of Labor and Industry, generally, if a customer can see the youth operate the fryer from the front counter, its use by a worker under 18 is acceptable. It is considered cooking at a lunch counter/snack bar, but if the fryer is not readily viewable from the counter, child labor may not use it.

State: Similar to federal, but according to the Minnesota Department of Labor and Industry, 14- and 15-year-olds **may not** oil, clean or maintain any power-driven machinery, either portable or stationary, while in motion or at rest. They **may not** operate lawn mowers, weed whips, gas or electric leaf blowers, hedge trimmers or other power-driven lawn equipment, snow blowers, meat slicers and bakery machinery.

Due to a legislative change in 2020 sought by Hospitality Minnesota, **minors of at least 16 years of age may now be employed and permitted to operate lawn care equipment**, including trimmers, weed cutters, and machines designed to cut grass and weeds. This law applies to minors employed by a golf course, resort, municipality, or those hired by a rental property owner.

An employer hiring a 16 or 17-year-old must:

- Ensure that the lawn equipment operators follow all safety rules and restrictions provided with the equipment's operator manual, including prohibiting the operation of lawn care equipment on a slope greater than is recommended by the operator's manual; and
- Ensure all safety equipment is in place on all lawn care equipment, including roll-over protection, seat belts, operator presence control systems, interlocks, guards, and shields.

The 16 or 17-year-old employed must:

- Be trained in the safe operation of the lawn care equipment before operating equipment.
- Wear personal protective equipment as necessary, always when operating the lawn care equipment.

Work Hours of 18-Year-Old High School Students: The 2017 Legislature passed a slight amendment to the state's child labor laws. This change provides that an employee who is a high school student and is age 18 or older may give a written notice, two weeks in advance to the employer requesting that the child-labor high school hours restrictions be applied to them. If the employee provides this notice two weeks prior to the beginning of their restricted hours, an employer must honor this written notice and not schedule the employee or permit the employee to work after 11:00 p.m. on the night before a school day or before 5:00 a.m. on a school day. Absent such a request by the employee, a high school student age 18 or older may be scheduled during the otherwise restricted hours.

A related provision which allows a parent to request that a child under 18 be allowed to work until 11:30 p.m. on a night before a school day and beginning at 4:30 a.m. on a school day remains in state law.

Deductions from Paychecks

This state regulation is stricter than federal law; therefore, it applies to ALL employers in Minnesota.

No employer shall make ANY deduction, whether direct or indirect, from wages or tips due to or earned by an employee for faulty workmanship, lost or stolen property, damage to property or to recover any other claimed indebtedness unless the employee has voluntarily authorized the employer in writing after the loss occurred to make the deduction, or unless the employee is held liable in a court of competent jurisdiction for the loss or indebtedness.

No deductions may be made, whether direct or indirect, which bring an employee's wages below the minimum wage. This includes shortages in money receipts or merchandise, spoilage, breakage, cash shortages, walkouts, bad checks, bad credit slips, missing guest checks, robbery, etc. (Tips are not considered wages for minimum wage purposes.)

No deductions, direct or indirect, may be made for uniforms, which when subtracted from wages, would reduce the wages below the minimum wage. *Also see the section on Uniforms on page 50.*

Finally, effective August 1, 2024, employers are no longer permitted to deduct the credit card processing fee from an employee's tips; instead, employees must receive the full amount of tips paid by card or e-payment, which shall be paid to the employee in the next pay period. (For more information on tips, see pages 43-49).

Drug & Alcohol Testing in the Workplace

The Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA) applies to all employers regardless of size. There is also federal law on drug and alcohol testing, particularly for the drivers of trucks over 26,000 pounds gross vehicle weight.

Drug, cannabis and alcohol testing of employees and applicants is permitted only as explicitly authorized by statute. Testing can only be done under a written drug cannabis and alcohol testing policy that meets statutory requirements and must be conducted by an accredited or licensed testing laboratory. Effective August 1, 2024, drug, cannabis, or alcohol testing authorized by law can be conducted using "oral fluid testing", in other words, saliva samples. In such instances, the employer must inform the employee/applicant of the test result at the time of testing. If the test is positive, inconclusive, or invalid, the employee/applicant may request that the employer use a testing laboratory at no expense to the employee/applicant, so long as this request is made within 48 hours. If the testing laboratory result is positive, any confirmatory retesting requested by the employee/applicant is at their own expense.

If your company is interested in establishing a testing policy or has not reviewed a testing policy since the legalization of recreational cannabis in Minnesota (August 1, 2023), we recommend that you consult with an attorney with experience in labor law because the topic is complex and the penalties for violating the statute can be significant.

Employee Leave

Family & Medical Leave: ***Federal:*** *Employers with 50 or more employees at one or more work sites within a 75-mile radius must provide up to 12 weeks of unpaid leave during any 12-month period for eligible employees*:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, child or parent, who has a "serious health condition;" or,
- when the employee is unable to work because of a "serious health condition."

To be eligible for Family & Medical Leave, an employee must have worked for the employer:

- for at least 12 months; and
- for at least 1,250 hours (approximately 24 hours per week) during the year preceding the start of the leave.

Employers are required to maintain health coverage during the leave period and, upon return, place the employee in the same or equivalent job with equivalent benefits. You must provide each employee with written notice of these obligations before the 12-week period officially starts.

For more information, go to the U.S. Department of Labor Employment Standards Administration Wage and Hour Division website: **https://www.dol.gov/agencies/whd/fmla**

Minnesota Paid Family Medical Leave ("MN PFML"): Effective January 1, 2026, the MN PFML covers most people who work in Minnesota and most employers. Employees who are not covered include:

- Self-employed individuals and contractors, unless they opt-in for paid leave benefits.
- Seasonal workers who are employed no more than 150 days during any consecutive 52-week period in hospitality by an employer who averages receipts during any 6 months of the preceding calendar year were not more than 44% of ties average receipts for the other 6 months of the year.
- Employees who worked more than 50% of the time in another state.
- Employees who earned less than 5.3% of the state's average annual wage.

In a 12-month period, eligible employees are entitled to 12 weeks of paid medical leave for the employee's own serious health condition and 12 weeks of paid family leave to care for a loved one, to bond with a new child, for safety purposes, or due to military family leave. The combined leaves are capped at 20 weeks.

Not all employees are covered under the Minnesota Paid Leave law.

- Self-employed individuals and contractors are not covered by the Minnesota Paid Leave. However, they may opt-in for paid leave benefits.
- There is a seasonal worker exception for those "who are employed no more than 150 days during any consecutive 52-week period in hospitality by an employer whose average receipts during any six months of the preceding calendar year were not more than 44% of ties average receipts for the other six months of the year."
- Applicants are ineligible for Minnesota Paid Leave benefits if they are incarcerated or receiving unemployment benefits for any portion of a typical workweek.

The protections afforded under MN PFML mirror the protections under the FMLA. An employer cannot retaliate against an employee for requesting or obtaining MN PFML. An employer cannot obstruct or interfere with an employee's application to MN PFML. Additionally, an employee must be returned to the same position they held when the leave started, with equivalent benefits, pay, and other terms and conditions of employment. If during the leave, the employee experiences a layoff or if the position is eliminated, the employee is not entitled to reinstatement in the former or comparable position. In such circumstances, the employee retains all rights under the layoff and recall system, including a system detailed by a collective bargaining agreement, as if the employee had not taken the leave.

2026 contribution rates:

- The 2026 premium rate will be 0.88 percent and can be split between employer and employee contributions. Employers will contribute 50% of the total premium, although they may choose to pay up to 100%.
- In the 2025 Legislative Session the cap was reduced from 1.2% to 1.1% of the Social Security maximum taxable wage base.
- If you are a small business (less than 30 employees) and the average employee wage is less than 150% of the statewide average weekly wage, then you might be able to pay a reduced premium rate. You can access the premium calculator here: **https://mn.gov/deed/paidleave/employers/premiums/.**
- Please note the premium rate will be set each year, subject to a maximum set in state law (capped at the Old-Age, Survivors, and Disability Insurance (OASDI) limit).

For more information, go to the Minnesota Paid Leave website: **https://mn.gov/deed/paidleave/**

Military Service Leave: Covered employers are also required to grant up to 26 work weeks of leave during a single 12-month period to care for a covered military service member with a serious injury or illness if the eligible employee is the service member's spouse, child, parent or next of kin. This provision is referred to as the military caregiver leave.

Sick and Safe Leave: Minnesota law, along with a few municipalities, requires paid sick and safe leave. Employers in Minnesota must provide paid sick and safe leave to all employees who are reasonably anticipated to work at least eighty (80) hours in a calendar year.

These are the major provisions of the Minnesota law:

- ***Eligibility:*** Employees who are reasonably anticipated to work at least 80 hours in a year in Minnesota.
- ***Accrual:*** One hour earned for every 30 hours worked. Employees will begin earning accrued sick time at the start of employment.
- ***Rate of Pay***: For employees who are paid on an hourly basis, the "base rate" is the amount the employee would have been paid for the period of time when the leave was taken. Salaried employees receive the same rate as if the employee had not taken the leave. The "base rate" does not include commissions, shift differentials added to the hourly rate, overtime pay, premium pay, bonuses or gratuities.
- ***Frontloading:*** In lieu of providing sick and safe time accrual, employers may frontload at least forty-eight (48) hours of sick and safe time at the beginning of each year. Effective January 1, 2026, an employer may advance ESST to an employee prior to its accrual based on the employee's anticipated hours for the year.
- ***Usage:*** Employees can use earned sick and safe time as soon as it is accrued.

- ***Notice*:** Currently, employees are required to notify employers as soon as practicable. Effective January 1, 2026, employees will be required to provide notice "as reasonably required by the employer."
- ***Documentation*:** When an employee uses ESST for more than 2 consecutive scheduled work days, an employer may require reasonable documentation that ESST is covered.
- ***Annual Cap*:** Employees can accrue 48 hours per year with a carryover cap of 80 hours on total accrual. Employers who frontload sick and safe time do not have to allow for carryover. However, employers who frontload less than eighty (80) hours of sick and safe time must pay the employee for all unused sick and safe time at the end of each year.
- ***Recordkeeping*:** Employer must maintain records for 3 years, unless otherwise required by law or regulation and must be readily available for inspection upon demand.
- ***Covered Employers*:** All employers in Minnesota are required to provide paid leave.
- ***Increment of Time in Which Leave Can Be Used*:** Earned sick and safe time may be used in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15 minute increments nor can the employer require use of earned sick and safe time in more than four-hour increments.
- ***Effect on Other Laws***: Minnesota sick and safe time does not affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick and safe time or that extends other protections to employees.

For more information on the Minnesota law, visit: **https://www.dli.mn.gov/sick-leave**.

Minneapolis and St. Paul: Minneapolis and St. Paul have ordinances requiring employers to provide paid sick and safe leave to people who work 80 hours per year or more in the city. The ordinances are very similar but there are some differences.

These are the major provisions of the Minneapolis and St. Paul ordinances:

- ***Eligibility*:** Employees who work at least 80 hours in a year in the cities of Minneapolis and Saint Paul.
- ***Accrual*:** One hour earned for every 30 hours worked. Employees will begin earning accrued sick time at the start of employment.
- ***Usage*:** Employees can access earned hours after a provisional period, consistent with employer practice and no longer than 90 days.
- ***Annual Cap*:** Employees can accrue 48 hours per year with a carryover cap of 80 hours on total accrual.
- ***Posting Requirement*:** Employers must display a poster in a spot conspicuous and accessible to all employees in English or any other language spoken by five percent or more (Minneapolis) of the employer's workforce.

- ***Notice Requirement:*** Employers must provide written notice at time of hire, or if already employed, as soon as possible, in English and the primary language of the employee, provided the department has made available the notice in that language.
- ***Recordkeeping:*** Employer must maintain records for 2 years, unless otherwise required by law or regulation.
- ***Covered Employers:*** Workplaces with six or more employees in Minneapolis and for all employers in St.Paul are required to provide paid leave. Employers with five or fewer employees in Minneapolis would be exempt from providing paid leave but are required to provide unpaid leave.
- ***Increment of Time in Which Leave Can Be Used:*** An employer can specify the increment of time in which leave may be used but the increment cannot be longer than four hours.
- ***Non-Domiciled Employers:*** The St. Paul rules do not apply to employees of companies that aren't located in the city.

There are many complexities to these sick and safe leave requirements. For more information on the Minneapolis ordinance, visit: **http://sicktimeinfo.minneapolismn.gov/employer-resources.html** For details on St. Paul's ordinance, visit: **https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/labor-standards-enforcement-and-education-1-0**

Duluth: Duluth became the third Minnesota city to pass a sick and safe leave ordinance on January 1, 2020. However, Duluth repealed this ordinance on December 18, 2023, in favor of simply following the state Earned Sick and Safe Time Law that took effect January 1, 2024. Going forward, Duluth employers can now focus on complying with the state law alone

Bloomington: On June 13, 2022, Bloomington became the fourth Minnesota city to pass a sick and safe leave ordinance. The ordinance went into effect July 1, 2023, and is generally consistent with the provisions in the Minneapolis and St. Paul ordinances described above (see pgs. 16-17).

For more information on the Bloomington ordinance, visit:
https://www.bloomingtonmn.gov/mgr/earned-sick-and-safe-leave-essl

Read the full ordinance language here:
https://www.bloomingtonmn.gov/sites/default/files/2022-06/Ordinance%202022-31.pdf

Leave to Attend School Conferences and Activities: Employers with one or more employees and at least one work site in Minnesota must grant an employee up to 16 hours of unpaid leave during any 12-month period to attend school conferences or classroom activities of the employee's child or foster child when such activities cannot be scheduled during non-working hours. The employee must provide the employer with reasonable prior notice and make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operation. Employees need not be paid for school leave but can use accrued paid vacation or other appropriate leave for this purpose.

Leave for Family Members Killed or Injured in Military Service: An employer must grant up to 10 working days of a leave of absence without pay to an employee whose immediate family member, as a member of the U.S. armed forces, has been injured or killed while engaged in active service.

Leave to Attend Military Ceremonies: Unless the leave would unduly disrupt the operations of the employer, an employer shall grant a leave of absence without pay to an employee whose immediate family member, as a member of the U.S. armed forces, has been ordered into active service in support of a war or other national emergency. The employer may limit the amount of leave provided under this subdivision to the actual time necessary for the employee to attend a send-off or homecoming ceremony for the mobilized service member, not to exceed one day's duration in any calendar year.

Leave for Organ or Bone Marrow Donation: An employer must grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate an organ, partial organ, or bone marrow to another person. The combined length of the leaves shall be determined by the employee but may not exceed 40 work hours for each donation, unless agreed to by the employer. The employer may require verification by a physician of the purpose and length of each leave requested by the employee for organ donation. If there is a medical determination that the employee does not qualify as an organ donor, the paid leave of absence granted to the employee prior to that medical determination is not forfeited.

Leave for Pregnancy and Parenting: Under Minnesota law, all employees may take up to 12 weeks of unpaid leave upon the birth or adoption of their child, or, for female employees, for prenatal care, incapacity due to pregnancy, childbirth, or related health conditions.

When does the parental leave start?

- The leave must be taken within 12 months of the birth or adoption.
- Employees must request the leave from their employer.
- Employees can choose when the leave will begin.
- Employers can adopt reasonable policies about when requests for leave must be made.

Other provisions of the parental leave law:

- The total of paid leave, including sick leave or paid vacation, and an unpaid parental leave is not required to exceed 12 weeks.
- An employee may have a right to 12 weeks of leave total for birth or adoption of a child and any pregnancy-related leave even if they qualify for both FMLA and pregnancy or parental leave.
- Access to an employer-provided health insurance must be continued during pregnancy and parental leave but the employee may be required to pay for the cost of this coverage during a leave.

- An employee is entitled to return to their position or to one with comparable duties, hours and pay following a parental leave. This provision is complex and may require the specific advice of a labor attorney if questions arise as to what a comparable position might is.

There is more information available from the Minnesota Department of Labor and Industry at: **www.dli.state.mn.us.**

Employee Records

Minnesota employers are required to provide employees with access to their personnel record upon written request. All new hires and employees upon termination must be provided written notice of their rights under **Minn. Stat. § 181.961**.

A current employee is entitled to review his or her personnel record once every six months and the employer must make the information available for review during the employer's normal hours of operation at the employee's place of employment or other reasonably nearby location, but does not need to be made available during the employee's working hours. The employer may require that the review be made in the presence of the employer or the employer's designee. After the review and upon the employee's written request, the employer must provide a copy, at no charge, of the record to the employee.

A former employee may either review his or her personnel file once a year or obtain a copy of his or her personnel file free of charge once a year for as long as the record is maintained.

For all current and former employees, access must be provided to the personnel record within 7 working days after receipt of the request for records located in Minnesota and within 14 days after receipt of the request for personnel records located outside the state. As defined in statute, a personnel record "to the extent maintained by an employer, means: any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record." There are many categories of information and documents that are expressly not included in the statutory definition of a personnel record, which employers should consider familiarizing themselves with.

See "Review of Personnel Record by Employee" in **Minn. Stat. § 181.961** for more details.

Employment Applications | Ban the Box

Minnesota law prohibits paper or online job applications from including any questions about criminal arrests or convictions. The law, popularly called "ban the box," is intended to provide job candidates more opportunities to be evaluated on their skills and experience when applying for positions with private employers. A similar requirement has been in place for public employers since 2009.

The law does not require any employer to hire a candidate with a criminal background. Employers may still ask questions about criminal record and history in an interview or conduct background checks after the interview. The new law simply requires an employer to wait until later in the hiring process, at the interview stage or when a conditional job offer has been made, before asking the applicant about their criminal record or conducting a background check. This law does not change the requirement for background checks, which are currently mandated by state or federal laws for certain types of positions. The law is enforced by the Minnesota Department of Human Rights.

Additional information available online at: **https://mn.gov/mdhr/employers/criminal-background/**
The statute can be found at: **Minn. Stat. § 364.021**

Also see the section on Background Checks on page 10.

Exempt Employee Test – Eligibility for Overtime Pay

Federal: The federal Fair Labor Standards Act (FLSA) exempts "executive, administrative and professional employees" from overtime pay requirements under federal law. To qualify as exempt from federal overtime pay requirements under the new rules, an employee must meet three tests:

- ***Salary basis:*** To qualify as exempt, an employee must be paid on a "salary basis." This means employees must receive a predetermined and fixed minimum salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- ***Salary level:*** Executive, administrative and professional employees must earn a minimum salary to be considered exempt from federal overtime pay requirements. The minimum weekly salary level required for exemption has been raised to $844 ($43,888).
    - Importantly, while the salary level threshold was raised from $684/week to $844/week effective on July 1, 2024, this increase is facing numerous legal challenges. Two lawsuits challenging this increase have been filed in the Eastern District of Texas: one by the Plano Chamber of Commerce on May 24, 2024, and one by the Texas Attorney General on June 3, 2024. The salary threshold increase was temporarily blocked effective June 28, 2024, in the second case, but only for Texas employees. Additionally, a case challenging a related 2016 Department of Labor rule remains pending in the Fifth Circuit Court of Appeals. Employers may need to contact experienced labor counsel to remain apprised of the validity of this recent salary threshold increase.

- ***Duties:*** To be exempt, a "white collar" employee must perform a job that primarily involves executive, administrative or professional duties. In the hospitality industry, some employees are exempt from federal overtime pay requirements because they fall under the executive exemption, also known as the managerial exemption. The duties test is simplified into one three-part standard. Besides needing to be compensated at least $684 per week, these employees are considered exempt if their primary duty is management of the enterprise, they customarily and regularly direct the work of two or more other employees and they have the authority to hire and fire.

The rules require that exempt administrative employees have a primary duty of "performing office or non-manual work directly related to the management or general business operations of the employer or employer's customers."

Professional employees may be exempt from overtime pay requirements if they meet certain duties tests and pass the salary basis and salary level tests. There are two ways chefs may be considered exempt employees. Chefs may be considered "learned professionals" if they have advanced knowledge acquired by a course of specialized instruction, such as a four-year culinary arts program. Chefs can also be considered "creative professionals" if their primary duty requires "invention, imagination, originality or talent." Both of these types of professionals may be exempt from overtime pay.

State: Similar to federal guidelines. The federal salary minimum applies because it is more favorable to the employee.

For additional information, visit: **https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary**

The final rule is available at: **https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and**

Hours Worked

Hours worked include training time, on-call time, cleaning time, or any other time when the employee must be either on the premises of the employer (including while waiting for work to be prepared or available) or involved in the performance of duties in connection with employment. Employees must be paid for all hours worked, including rest periods of less than 20 minutes.

An employee who is required to remain on the employer's premises, or so close he or she cannot use the time effectively for the employee's own purposes, is working while on call. In contrast, an employee who is merely required to leave word as to where the employee may be reached is not working on call.

Also see the section on Breaks/Rest Periods on page 11.

Immigration Law

Federal Immigration Law requires employers to hire only U.S. citizens and aliens authorized to work in the United States. It also requires that an "Employment Eligibility Verification" (the I-9 Form) be filled out and kept on file for every employee hired. Employees must provide required documents, or receipt for a document the employee has applied for, within three days of the date employment begins. If a receipt is provided, the actual document must be produced within 90 days. Completed I-9s must be kept for three years after the date of employment begins or one year after the date the person's employment is terminated.

In addition, if you have hired workers for your business from an agency that supplies temporary help, you may be susceptible to Immigration & Customs Enforcement (ICE). If ICE raids your property and arrests the workers as being illegal immigrants, the best way to protect yourself is to:

- contact your attorney; and
- contact the temporary help agency that supplies the workers.

For such temporary workers, your contract should be with the agency and not the employees. Payment should be made to the agency, not the employees. Do not complete I-9 Forms for the workers yourself. You are not required to do so.

The Minnesota Office of the Investigations Division of the U.S. Citizenship and Immigration Services reports that the hospitality industry is one of the highest in the state in number of violations. For employee-related immigration matters, call (800) 357-2099. I-9s and other forms may be downloaded at: **https://www.uscis.gov/i-9#:~:text=Use%20Form%20I%2D9%20to,This%20includes%20citizens%20and%20noncitizens**.

If the employee is discharged or quits, it is not legal to withhold wages until an I-9 has been completed (**www.uscis.gov**). Other questions related to immigration-related employment can be directed to the U.S. Office of Business Liaison at (800) 357-2099. You may also visit the U.S. Department of Homeland Security's website at: **www.dhs.gov/**.

Deferred Action for Childhood Arrivals (DACA): On July 18, 2020, the United States Supreme Court upheld the Deferred Action for Childhood Arrivals (DACA) program. DACA provides protection from deportation to undocumented young adults who arrived in the United States as children. For the

nearly 800,000 young people who've qualified for the program, it allows them to work legally and obtain health insurance and a driver's license. The DACA Final Rule https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals went into effect on October 31, 2022. The State of Texas has filed a lawsuit further challenging the legality of the program and litigation continues in the 5th Circuit. DACA was again ruled unlawful on September 13, 2023, and this ruling was appealed back to the 5th Circuit in November 2023. On January 17, 2025, the Fifth Circuit Court of Appeals found that parts of DACA went against the Immigration and Nationality Act. However, the Fifth Circuit granted a stay that allows current DACA recipients to continue to have DACA and renew DACA. Additionally, the Fifth Circuit limited its ruling to Texas. In Texas, DACA recipients will have protection from deportation, but they will no longer be eligible to get work authorization and driver licenses. USCIS has publicly stated that it will not process any initial DACA requests at this time. For more information, please see the USCIS website: **https://www.uscis.gov/DACA**.

Independent Contractors

The IRS formerly used what has become known as the "Twenty Factor" test in determining direct employment vs. independent contractor status. Under pressure from Congress and representatives of labor and business, it has recently attempted to simplify and refine the test, consolidating the 20 factors into 11 main tests, and organizing them into three main groups: behavioral control, financial control and the type of relationship of the parties. Those factors appear below, along with comments regarding each one (source: IRS Publication 15-A, 2006 Edition, page 6; available at: **www.irs.gov/pub/irs-pdf/p15a.pdf**.

Behavioral Control: Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

- ***Instructions the business gives the worker.*** An employee is generally subject to the business' instructions about when, where and how to work. All of the following are examples of types of instructions about how to do work:
    - when and where to do the work;
    - what tools or equipment to use;
    - what workers to hire or to assist with the work;
    - where to purchase supplies and services;
    - what work must be performed by a specified individual; and
    - what order or sequence to follow.
        - The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the

business has retained the right to control the details of a worker's performance or instead has given up that right.

- ***Training the business gives the worker.*** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial Control: Facts that show whether the business has a right to control the business aspects of the worker's job include:

- ***The extent to which the worker has unreimbursed business expenses.*** Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services they perform for their business.
- ***The extent of the worker's investment.*** An employee usually has no investment in the work other than his or her own time. An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not necessary for independent contractor status.
- ***The extent to which the worker makes services available to the relevant market.*** An independent contractor is generally free to seek out other business opportunities. Independent contractors often advertise, maintain a visible business location and are available to work in the relevant market.
- ***How the business pays the worker.*** An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
- ***The extent to which the worker can realize a profit or loss.*** Since an employer usually provides employees a workplace, tools, materials, equipment, and supplies needed for the work, and generally pays the costs of doing business, employees do not have an opportunity to make a profit or loss. An independent contractor can make a profit or loss.

Type of Relationship: Facts that show the parties' type of relationship include:

- ***Written contracts describing the relationship the parties intended to create.*** This is probably the least important of the criteria, since what really matters is the nature of the underlying work relationship, not what the parties choose to call it. However, in close cases, the written contract can make a difference.
- ***Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.*** The power to grant benefits carries with it the power to take them away, which is a power generally exercised by employers over employees. A true independent contractor will finance his or her own benefits out of the overall profits of the enterprise.

- ***The permanency of the relationship.*** If the company engages a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.
- ***The extent to which services performed by the worker are a key aspect of the regular business of the company.*** If a worker provides services that are a key aspect of the company's regular business activity, it is more likely that the company will have the right to direct and control his or her activities. For example, if a pizza parlor hires a delivery driver, it is likely that it will present the driver's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

Effective July 1, 2024, in what has been touted as an effort to combat misclassification of employees as independent contractors, Minnesota law expressly prohibits and penalize such misclassification. Specifically, employers are prohibited from (1) failing to correctly classify employees, (2) failing to report or disclose to any person or government agency who is an employee when required to do so, and (3) requiring or requesting employees to enter into agreements or complete any documents that misrepresents the employee's status as an independent contractor. While employers can be held liable for this misclassification, the new statute also provides for individual and successor liability, along with penalties including compensatory damages (the value of supplemental pay the misclassified employee should have received) and a penalty of up to $10,000 for each misclassification. At present, the general employee/independent contractor tests remain unchanged; however, although the Attorney General's Task Force on Worker Misclassification will be reviewing those tests before the next legislative session.

In another recent development, on July 10, 2024, the Minnesota Supreme Court recognized the tort of negligent selection of an independent contractor. Minnesota businesses can now be held liable for failing to exercise reasonable care in selecting competent and careful independent contractors. The contours of this duty of reasonable care will depend on the nature of the work and its associated risks. The Court provided some concessions to businesses to address concerns of increased risk and cost:

- First, the Court held that for work requiring no special skill or training and posing a minimal threat of physical harm if done improperly, businesses are entitled to assume that a contractor of "good reputation" is competent. Stated otherwise, for simple, low-risk work, businesses will not be required to prove they vetted the contractor with the same degree of diligence as they would need to show in selecting contractors doing more skilled, risky work.
- Second, the Court clarified that when a contractor is incompetent due to a lack of skill/experience/equipment but not incompetent due to a previous lack of attention or diligence, the business will only be liable for harm caused by the contractor's lack of skill/experience/equipment. Essentially, then, businesses will only potentially be held liable for contractor incompetence when they might have reasonably foreseen the harm (by adequately vetting the contractor before engaging them to provide services).

Despite these concessions, the Court's ruling does expose all businesses utilizing contractors to the risk of additional liability, and so businesses relying extensively on contractors should consider reviewing their policies on contractor selection to ensure they would be able to demonstrate a thorough vetting process if forced to do so in court.

International Student Work Program

Minnesota resorts, hotels and restaurants have been employing international student workers during the peak summer season for more than 25 years. There are two State Department approved programs which provide students with a J-1 visa to work lawfully in the United States. The most popular option is the Summer Student Work Travel program, which allows up to four months of work during the peak summer season for full-time international students. There were nearly 2,500 participants in this program in Minnesota in 2021.

The requirements for the students are as follows:

- sufficient proficiency of the English language to successfully interact in an English-speaking environment;
- post-secondary enrollment in and active pursuit of a degree or other full-time course of study at an accredited classroom based, post-secondary educational institution outside the United States;
- successful completion of at least one semester or equivalent of post-secondary academic study; and
- pre-placement in a job prior to entry unless from a visa waiver country.

The basic employer requirements are:

- assist student workers in applying for a Social Security Card upon arrival;
- provide participants the number of hours of paid employment per week as identified on the job offer and agreed to when the sponsor vetted the job;
- arrange for or provide housing which meets program requirements (students can be charged a reasonable amount for housing);
- pay those participants eligible for overtime worked, in accordance with applicable state or federal law;
- provide cultural opportunities including exposure to the local community, attractions, events and shopping;
- notify sponsors promptly when participants arrive at the work site and begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of job placements; or when participants leave their position ahead of their planned departure; and
- contact sponsors immediately in the event of any emergency involving participants or any situation that impacts the health, safety or welfare of participants.

There is also an internship program which allows longer stays and requires an approved training program. The sponsoring organization can provide more information on internships. There were almost 2,500 international J-1 interns in Minnesota in 2021, but not all of them were in the hospitality industry.

Employers and students work with approved sponsors who administer the program following State Department rules and issue the J-1 visa. There is a complete list of sponsors on the State Department website at: **http://j1visa.state.gov/participants/how-to-apply/sponsor-search/?program=Summer%20Work%20Travel**.

J-1 Student Visa Workers Exempted from Unemployment Insurance Tax: As of October 1, 2020, J-1 Student Visa Workers are exempted from Unemployment Insurance Tax and businesses who employee them will no longer have to pay this state tax. Hospitality Minnesota worked for several years to exempt employers from having to pay unemployment insurance tax on J-1 student workers, since such workers are ineligible to collect unemployment. The hospitality industry is the primary employer of J-1 student workers in Minnesota.

Also see the section on Minimum Wage Rates on page 30 about the special wage provision in Minnesota law for international workers who receive lodging or a meal plan as part of their employment.

Jury Duty

An employer must permit employees to report for jury duty or to respond to a summons without any adverse employment impact. Employers must release employees summoned for jury duty from their regular work schedule, including any shift work, and may not require such employees to work alternative shifts on any day the jury is required to report to the courthouse for jury duty. Some employers have a policy to provide employees with the difference between their normal wages and jury pay. Such a policy is not required by law. If an employer has such a policy, it should be in writing, should be applied consistently, and may be limited to a maximum amount of jury service, for example, a two-week period.

Lodging Credit

The state regulation is stricter than federal law; therefore, it applies to ALL employers in Minnesota.

For lodging that is not the principal residence of the employee, an allowance of 75% of the minimum wage for one hour of work is allowed to be taken per day under Minnesota law if the lodging is adequate, decent and sanitary, according to usual and customary standards.

If the lodging is the chief place of residence of the employee, a credit toward the minimum wage of that employee may be taken at the fair market value of the lodging. Where more than one employee shares the same residence, the lodging allowance for the total number of employees sharing the residence shall not exceed the fair market value of the residence. The tenancy shall be evidenced by a lease agreement providing for at least a month-to-month tenancy, and shall include exclusive, self-contained bathroom and kitchen facilities.

Meals

Federal: Federal law does not require a meal break. However, they are customarily given. Employees need not be paid for meal periods of 30 minutes or more if they are completely freed from all work requirements during the period.

State: State law requires employers to "permit an employee who is working for eight or more consecutive hours sufficient time to eat a meal." The state generally considers this to be 20 minutes or more. If the employee is completely freed from all work requirements during the period, the employer is not required to pay the employee for the meal break. This requirement was amended in 2025. Effective January 1, 2026, an employer "must allow each employee who is working for six or more consecutive hours a meal break of at least 30 minutes."

Meal Credit/Allowance: ***Federal:*** Employers who provide meals to employees are entitled to a credit against wages due. This credit may include the reasonable cost to the employer of furnishing the meal. You must have the permission of your employees before you can take a meal credit against minimum wage. The provisions for meal credits are:

- the employee must be informed in advance and agree to the meal credit;
- he/she must also be given an opportunity periodically to withdraw from the program;
- he/she cannot be coerced; and
- the cost must be reasonable.

State: A meal allowance may be credited toward the minimum wage for meals furnished by the employer and accepted by the employee. No employee is required to accept meals as a condition of employment. To have the allowance credited, meals must be consistent with an employee's work shift and provide an adequate portion of a variety of wholesome, nutritious foods. Minnesota's rules provide that such meals must include at least one food from each of the following four groups: (1) fruit or vegetables; (2) cereals, bread, or potatoes; (3) eggs, meat, or fish; and (4) milk, tea, or coffee. However, for breakfast, food from the eggs/meat/fish group may be omitted if both bread and cereal are offered. The employer must keep a record of meals accepted by the employee, or no credit may be taken. **State law allows a meal allowance of 60% of the adult minimum wage for one hour of work per meal.** Since this is stricter than federal law, this is the maximum allowable meal allowance.

Please Note: Because of the recordkeeping and nutritional requirements to take a meal credit against the minimum wage, the standard in the industry is to simply charge employees for any meals they want to eat. Meals may be offered to employees at a reduced rate, but there is no obligation to do so. Full price for the meal may be charged as long as the meals are accepted voluntarily.

Sales Tax on Employee Meals: Charges to employees for meals are taxable and you must collect sales tax on the amount the employee pays for a meal. If employees receive free meals, use tax is due by the business on its costs of all taxable items, including disposable plates, soft drinks, napkins, cups, flatware, etc., for use in the meal. No use tax is due on the cost of the nontaxable food ingredients, but tax is due on the cost of prepared food that you had purchased exempt for resale.

Also see the section on Breaks/Rest Periods on page 11.

Minimum Wage

The last specific increase in the Minnesota minimum wage was in 2016. The wage is now "indexed" for inflation based on Bureau of Labor Statistics inflation data. By August 31 each year, the Commissioner of Labor and Industry will calculate an increase in the wage that will be the lesser of 5.0% (increased from 2.5% during the May 2024 legislative session) or inflation. The new wage will be effective on January 1 of the following year. The calculation will be repeated each year.

Minnesota Minimum Wage Effective January 1, 2025	
Minimum wage	$11.13per hour
90-day training wage (under 20 years of age)	$9.08 per hour

Starting January 1, 2025, the subminimum categories were eliminated. Previously, employees would have a different minimum wage depending on the size of the employer, if they had a J-1 visa, or their age (if they were under 18 years of age).

NOTE: Employers located in the City of Minneapolis should see the Minneapolis section on page 30 for rates specific to them. Employers located in the City of St. Paul should see the St. Paul section on page 31 for city-specific rates.

The ***training wage*** applies during the first 90 consecutive days of employment for workers under the age of 20. Because of the separate "youth wage," the training wage is only useful for new employees who are 18 or 19 years of age. See also, page 51.

Tip Credit: Minnesota law prohibits the use in any form of a tip credit for any businesses operating in the state. Employers must pay at least the minimum wage to employees who earn tips.

See more on tips on page 44.

Minneapolis: The Minneapolis City Council passed an ordinance in 2017 which phases in a minimum wage in the city to $15 an hour by 2022 for large employers and by 2024 for small employers. The ordinance does not recognize tips nor create a youth wage. The law applies to all employers in the City of Minneapolis, but excludes the U.S. government, the state of Minnesota, and any county or local government, other than the City of Minneapolis. The rates in the chart that follows apply only to businesses located in Minneapolis:

MINNEAPOLIS MINIMUM WAGE		
Effective Date	**Large Businesses (more than 100 employees)**	**Small Businesses (100 or fewer employees)**
July 1, 2022	$15.00	$13.50
January 1, 2023	$15.19 Indexed to inflation	No change
July 1, 2023	No change	$14.50
January 1, 2024	$15.57 Indexed to inflation	No change
July 1, 2024	No change	$15.57 Indexed to inflation
January 1, 2025	$15.97 indexed to inflation	$15.97 indexed to inflation

The details make it more complex:

- An employer's business size for the current calendar year is based upon the average number of employees who worked for compensation per week during the previous calendar year.
- In determining the number of employees, all persons performing work for compensation on a full-time, part- time, joint, or temporary basis shall be counted, whether or not the persons work in the city.
- Franchised businesses of a brand that has 10 or more locations nationally are a large employer in Minneapolis regardless of the number of employees at a location in the city.
- Each full-service restaurant location within the geographic boundaries of the city and with fewer than 10 locations nationally, shall be treated as a unique employer solely for the purposes of determining business size. For other businesses, a company with two or more locations in the city or 10 or more locations nationally is a large business for the minimum wage.

There is a training wage of 85% of the minimum wage for the first 90 calendar days of employment for workers not yet 20 years of age in ***city approved*** training programs. There are also some exceptions for programs providing services to special needs workers including the State extended employment program.

Learn more about the Minneapolis minimum wage at:
http://minimumwage.minneapolismn.gov/employer-resources. html.

St. Paul: The St. Paul City Council unanimously passed an ordinance in November of 2018 that increases the minimum wage to $15 per hour over several years. The wage is indexed to inflation with the phase-in period that began in 2020. Large businesses will reach $15 in 2023; small businesses in 2028. The ordinance does not recognize tips but does have a youth wage. See the chart that follows for the rates during the various phase-in periods for employers within the city limits of St. Paul:

ST. PAUL MINIMUM WAGE			
Effective Date	**Large Businesses (more than 100 employees)**	**Small Businesses (100 or fewer employees)**	**Micro Businesses (5 or fewer employees)**
July 1, 2022	$13.50	$12.00	$10.75
July 1, 2023	$15.00	$13.00	$11.50
July 1, 2024	$15.57 indexed to inflation	$14.00	$12.25
January 1, 2025	$15.97 indexed to inflation	$14.00	$12.25
July 1, 2025	$15.97 indexed to inflation	$15.00	$13.25
January 1, 2026	indexed to inflation	indexed to inflation	$13.25
July 1, 2026		indexed to inflation	$14.25
July 1, 2027			$15.00

Youth Wage: Employees who are 14-17 years of age shall be paid not less than 85% of the city minimum wage for small employers and rounded to the nearest nickel during their first 90 days after hire. After more than 90 days after the date of hire, employees who are 14-17 years of age shall be paid the applicable city minimum wage.

View the full St. Paul ordinance at:
https://stpaul.legistar.com/LegislationDetail.aspx?ID=3699492&GUID=F0F09B00- 71EB-471D-A774-3B7C33938767&Options=&Search=&FullText=1

New Hire Reporting

Under the "new hire" reporting law, all employers hiring employees living or working in Minnesota must report information on their employees within 20 days of hire to the Minnesota New Hire Reporting Center. Failure to report an employee could result in fines up to $500.

Employers must report the following information for each employee:

Employee Information	***Employer Information***
Employee's name	Employer's name
Address	Employer's address
Social Security Number	Employer's federal Employer ID number
Date of birth, if available	State of hire, if available
Date of hire, if available	

All new hires must be reported, even if they are part-time, short-term or seasonal employees. This includes anyone who has come back to work after being laid off, granted leave without pay, or terminated from employment. Reporting new hires is a simple process. You may report new hires through online reporting, electronic reporting, fax or mail. Section 802 of the Claims Resolution Act requires employers to also report the date employees first perform services for pay. Employers should report this date in the "Date of Hire" field. In addition, the Act requires employers to re-report all employees who have had a break in service for more than 60 days. Additional information is available from the Minnesota New Hire Reporting Center at (651) 227-4661 or (800) 672-4473 or online at: **www.mn-newhire.com**.

On July 1, 2024, Minnesota launched a newly designed website to host its New Hire Reporting Center, which changed its SFTP hostname. This is an important change to be aware of for employers who send files via FTP, and additional information regarding this change can be found at: **https://mn-newhire.com/ftp**.

Non-Compete Agreements Banned

Effective July 1, 2023, Minnesota banned nearly all post-termination covenants not to compete (also called non-compete agreements) between employers and their employees, as well as between employees and certain independent contractors, entered into on or after July 1, 2023. Covenants not to compete are defined as agreements between the employer and employee that restrict the employee, after termination of employment, from performing (1) work for another employer for a specified period of time; (2) work in a specified geographical area; or (3) work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement. This ban does not apply to confidentiality, non-solicitation, or trade secret protection agreements. Further, with respect to independent contractors, this ban does not apply to non-competes that are agreed upon during the sale of a business or in anticipation of the dissolution of a partnership, limited liability company, or corporation.

More recently, effective July 1, 2024, Minnesota continued to expand its restrictions on non-compete agreements and similar restrictive covenants by prohibiting agreements between service provider companies and their customers that would prevent customers from hiring employees of those service

providers. Under the new law, service providers, defined as an entity or group acting as an employer or manager for work contracted or requested by a customer, may not "restrict, restrain, or prohibit in any way a customer from directly or indirectly soliciting or hiring an employee of a service provider." This means that any provision of an existing service contract that purports to restrict this kind of solicitation is void and unenforceable. Notably, this statute defines employees as including independent contractors who perform services for service contractors.

Employers should review their employment agreements and service contracts and amend them as necessary to avoid incorporating void and unenforceable restrictive covenants.

Nursing Mothers and Lactating Employees

Employers in Minnesota are required to provide reasonable break times each day to an employee who needs to express milk. Such break times may run concurrently with any break times already provided to the employee. Employers are not permitted, however, to reduce an employee's compensation for time used for the purpose of expressing milk. Additionally, nursing and lactating employees have a right to break times to express milk regardless of their children's age, and regardless of whether the breaks would unduly disrupt the operations of the employer.

Employers must make reasonable efforts to provide a clean, private area, in close proximity to the work area, other than a bathroom or a toilet stall, that is shielded from view and free from intrusion from coworkers and the public and that includes access to an electrical outlet, where the employee can express milk in privacy.

An employer may not retaliate or discriminate against any employee who asserts the right to express milk.

Overtime

Federal: Non-exempt employees (*see the definition of Exempt employees on page 20*) must receive overtime pay at the rate of one-and-one-half times their regular rate of pay for all hours worked over 40 in the work week. (This is more beneficial to the employee than the state law and will take precedence if you are covered under federal law.)

State: Overtime must be paid at a rate of one and one-half times the employee's regular rate after that employee has worked 48 hours a week.

Compensatory Time: Compensatory time is time off in lieu of overtime at a rate not less than 1½ hours for each hour of employment for which overtime compensation is required. Generally, employers are NOT allowed to use comp time in lieu of overtime pay. The Department of Labor does allow employers to use "time-off" plans as long as the time is taken during the same pay period in which it was accrued, and the employee gets time-off at time-and-a-half for all hours worked overtime.

Overtime Exemption for "Retail Commission Employees" (Those Earning Service Charge Income): Hospitality businesses meet the definition of "retail" under the Fair Labor Standards Act (FLSA). Section 7 (i) of the federal law provides an exemption from the payment of overtime for workers that meet the definition of retail commission employees. Hotels and restaurants are specifically listed in the U.S. Department of Labor fact sheet on this provision. There is a similar provision in Minnesota law.

To be eligible for the exemption:

- the employee's earnings must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
- more than half the employee's total earnings in a representative period must consist of commissions.

The representative period for determining if enough commissions have been paid may be as short as one month but must not be greater than one year. The employer must select a representative period in order to determine if this condition has been met.

Hotels, motels and restaurants may levy mandatory service charges on customers which represent a percentage of amounts charged customers for services. If part or all of the service charges are paid to service employees, that payment may be considered commission and, if other conditions in section 7(i) are met, the service employees may be exempt from the payment of overtime premium pay.

It is important to note that tips provided voluntarily by guests can't be counted for this exemption. Only service charges or automatic gratuities qualify under the FLSA as commissions for the purpose of the overtime exemption.

Pay History Inquiry Prohibited

Effective January 1, 2024, Minnesota employers are not permitted to inquire into or consider the pay history of a job applicant during the hiring process. "Pay history" includes past wages, salaries, benefits, or any other form of compensation. While applicants are permitted to disclose pay history voluntarily for the purpose of negotiating their compensation, employers may not ask, encourage, or prompt applicants for this information. Importantly, employers are still permitted to inquire into an applicant's expectations regarding compensation. Employers can also consider any voluntarily

disclosed information regarding past compensation, but only to support a higher wage or salary than initially offered.

Payment of Wages

Minnesota law requires that all wages due an employee must be paid at least once every 31 days (there is a different standard for "transitory employees") on a regular payday. The new state wage theft law expressly states that this includes "salary, earnings and gratuities" and that employers are required to provide all *new* employees with a written notice that includes information related to their payment of wages including:

- date the employee will receive the first payment of wages earned;
- their regularly scheduled payday; and
- the number of days in the employee's pay period.

There are other disclosures required in the written disclosure to new employees, which are covered in the Wage Theft section on page 53 of this document.

For additional information, review the Minnesota Department of Labor's guidance for employers: **https://www.dli.mn.gov/sites/default/files/pdf/wage_theft_summary_employers.pdf**

Direct Deposit and Payment Cards: Payment may be made by direct deposit or to a payment card but that form of payment cannot be mandatory.

Other stipulations around payment cards include:

- The employee must authorize receiving their wages on a payment card in writing.
- Fees for receiving payment electronically are not allowed.
- A payment card cannot include a link to payroll advances, loans or other forms of credit.
- An employee must be able to withdraw their entire balance from a payroll card account on or after the regular payday.

Details on the use of a payroll card can be found in **Minn. Stat. §177.255**.

Also see the section on Termination of Employment on page 43.

Posters – Employment Related

Businesses are required to display a number of labor-related posters. **Unless otherwise indicated, state and federal posters listed below can be found as part of the "All in One" Labor Law poster**

available from your Association at no charge. To order a copy, visit your Association's website and look under "Resources."

State Required Posters:

- Age Discrimination
- Employer-Sponsored Meetings or Communications
- Minimum Wage Rates
- Safety and Health Protection on the Job
- Unemployed?
- Workers' Compensation
- Veteran Benefits and Services (*for employers with more than 50 full-time employees*)

Employers are encouraged, but not required, to display the following state law posters:

- Earned Sick and Safe Time
- Packinghouse Workers Bill of Rights
- Pregnant Workers and New Parents

Note: *If you want separate posters for each of these state posters, visit*: **Workplace posters | Minnesota Department of Labor and Industry (mn.gov)**

Federal Required Posters:

- Employee Rights Under the Fair Labor Standards Act (FLSA/Minimum Wage)
- Job Safety and Health: It's the Law (Occupational Safety and Health Act/OSHA)
- Employee Rights and Responsibilities Under the Family and Medical Leave Act (FMLA)
- Know Your Rights (EEO)
- Employee Polygraph Protection Act (EPPA)
- Your Rights Under the Uniformed Services Employment and Reemployment Rights Act (USERRA)

Note: *If you want separate posters for each of these federal posters, visit*: **www.dol.gov/general/topics/posters**.

Not Included in the "All in One" Labor Law poster: City required posters and Sex Trafficking Prevention Training posters are NOT part of the *"All in One" Labor Law poster.*

Minneapolis, Saint Paul, and Bloomington | Earned Sick and Safe Leave: Employers in Minneapolis, St. Paul, and as of July 2023, Bloomington, are required to post information about their city's requirement for Earned Sick and Safe Leave. The required posters are available on the city websites:

- Minneapolis - **http://sicktimeinfo.minneapolismn.gov/employer-resources.html**
- St. Paul - **www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development-17**
- Bloomington – **https://www.bloomingtonmn.gov/mgr/earned-sick-and-safe-leave-essl**

Also see the Employee Leave section on page 15.

Sex Trafficking Prevention Training Poster *(hotel/motel only)***:** A Minnesota law effective August 1, 2018, requires hotels and motels to train employees on identifying and responding to suspected sex trafficking. The law also requires an operator to post a notice or poster in an area readily accessible to employees. Access the materials at:
www.health.state.mn.us/injury/topic/safeharbor/hoteltrafficking.html#materials.

Also see the Sex Trafficking Prevention Training section on page 43.

Pregnancy & Childbirth Accommodations

The Women's Economic Security Act (WESA) requires employers to provide reasonable accommodation at the request of a pregnant employee for health conditions related to pregnancy or childbirth. An employer cannot require an employee to take a leave or accept an accommodation or retaliate against an employee for requesting or obtaining an accommodation.

Reasonable accommodation includes, but is not limited to:

- temporary transfer to a less strenuous or hazardous position;
- modification in work schedule or job assignments;
- seating;
- frequent restroom breaks; and
- limits on heavy lifting.

The law, however, specifies that an employer is not required to do any of the following in order to provide accommodation:

- create a new or additional position;
- transfer an employee with greater seniority;
- discharge any employee; or
- promote any employee.

More information is available from the Minnesota Department of Labor and Industry at: **www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs**

Reasonable accommodation need not be provided if an employer can demonstrate that the accommodation would impose undue hardship on the operation of the business. This exception, however, does not apply to these accommodations:

- more frequent restroom, food, and water breaks;
- seating; or

- limits on lifting over 20 pounds.

Right to Recall Ordinance (Minneapolis)

In 2021, the cities of Minneapolis and St. Paul passed "Right to Recall" ordinances, requiring hotels and event centers to follow certain procedures in re-hiring laid off employees as employment positions become available. While St. Paul's ordinance expired December 31, 2022, the Minneapolis ordinance is scheduled to continue for 1 year beyond the expiration of the public health emergency declared by the mayor. Mayor Frey terminated the public health emergency on October 2, 2023, meaning that the Minneapolis right-to-recall ordinance will remain in effect until October 2, 2024.

Among other things, the rule requires laid-off employees be given certain priority in hiring and states in part:

> "…(b) A Laid-off Employee is qualified for a position if the Laid-off Employee:
> (1) Held the same or similar position at the time of the Laid-off Employee's most recent separation from active service with the Employer; or
> (2) Is or can be qualified for the position with the same training that would be provided to a new employee hired into that position…"

The ordinance has specific record-keeping and reporting requirements and can be accessed in its totality here: **https://lims.minneapolismn.gov/Download/MetaData/20776/2021-012_Id_20776.pdf**

Salary Ranges in Job Postings

Effective January 1, 2025, Minnesota employers that employ 30 or more employees at one or more sites in Minnesota will be required to "disclose in each posting for each job opening with the employer the starting salary range" along with "a general description of all of the benefits and other compensation, including but not limited to any health or retirement benefits, to be offered to a hired job applicant." Employers who elect not to offer a salary range must instead "list a fixed pay rate." A salary range, which cannot be open-ended, is defined as "the minimum and maximum annual salary or hourly range of compensation, based on the employer's good faith estimate, for a job opportunity of the employer at the time of the posting of an advertisement for such opportunity." Job postings are defined to include recruitment solicitations done "indirectly through a third party," and include any electronic or hard copy documents that include qualifications for desired applicants.

Same Sex Marriage Recognition

Same sex marriages are legal in all states. Employers in Minnesota should review their personnel policies and manuals to verify that all married employees are treated consistently including those in same sex unions. Issues that may be impacted by the change in state law on this issue include:

- W-4 corrections as to marital status;
- plan design for a retirement program such as a 401K;
- eligibility for insurance plans including health coverage;
- family medical leave provided by both state and federal law; and
- when sick pay can be used (*See the Employee Leave section on pages 15-19)*

Service Charges & Automatic Gratuities – Wages

Clear disclosure: If your hospitality business implements a service charge, it is critical to properly disclose the charge and its purpose to customers. There have been a variety of lawsuits filed across the country against restaurants or lodging facilities related to service charges. Most of these cases have alleged that the service charge was not adequately disclosed prior to being assessed or that the proceeds from the service charge were used for a purpose other than what was disclosed. In a recent case in Minnesota the courts upheld the use of service charges, because it found that the operator adequately disclosed its policy to its customers.

Service Charges vs. Gratuities (Tips): Under Minnesota law, gratuities are the property of the employee(s) who receive them, and employers are generally prohibited from requiring employees to pool tips for redistribution by the employer under Minnesota law.

"Obligatory charges" such as service charges may be considered gratuities if they "might reasonably construed by the guest … as a sum to be given to an employee as payment for personal services rendered." If an employer does not want a service charge to be treated as a gratuity, the law states it must post "**clear and conspicuous notice that the obligatory charge is not a gratuity…in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer**." Disclosures on menus, statement of charges or other printed materials must be in at least 9-point font (1/8 inch) or in the case of placards, 18point font (1/4 inch). (See **Minn. Rule 5200.0080** and **Minn. Stat. §177.23**, subd. 9.)

Importantly, in May 2024, the Minnesota Deceptive Trade Practices Act was amended in a purported effort to eliminate so-called "junk fees." Effective January 1, 2025, the statute will provide that it is a deceptive trade practice to offer a price for goods or services "that does not include all mandatory fees or surcharges." The amended statute will define a "mandatory fee" as a fee or surcharge that "(1) must be paid in order to purchase the goods or services being advertised; (2) is not reasonably avoidable by the consumer; or (3) a reasonable person would expect to be included in the purchase of the goods or services being advertised." For food or beverage service establishments, including hotels, compliance with the statute will be achieved "if, in every offer or advertisement for the purchase

of a good or service that includes pricing information, the total price of the good of service being offered or advertised includes a clear and conspicuous disclosure of the percentage of any automatic and mandatory gratuities charged." The amended law does not prohibit automatic gratuities, but instead requires them to be clearly labeled on the bills provided to customers. While this amendment may be duplicative of the significant burdens already imposed on establishments to disclose fees and gratuities (as noted above), it does demonstrate the need for establishments to be particularly thoughtful in how these fees are described and assessed. Hospitality Minnesota will continue to apprise its members of developments in this law's interpretation and enforcement as further information becomes available.

How Can Proceeds from Service Charges be Used: Assuming the business has adequately disclosed the service charge and the fact that it is not a gratuity, the proceeds become the property of the business. The proceeds can be used to offset costs such as employee health care or other benefits, cover the cost of certain guest services, increase compensation to certain service employees, etc. Businesses should take extra caution to ensure that if they publicly state that the proceeds are intended for a specific purpose (employee benefits, etc.), that they do indeed go to the purpose in the manner described and that the business can document it.

Tax considerations when service charges are directed toward compensation: The Internal Revenue Service (IRS) requires that gratuities and compensation-directed service charges which are required to be paid by a guest are to be *reported as wages* and not as tips. In order to be treated as a tip, these four conditions must be met:

- the payment must be made free from compulsion;
- the customer must have the unrestricted right to determine the amount;
- the payment should not be the subject of negotiation or employer policy; and
- generally, the customer has the right to determine who receives the payment.

Practically, if there is a statement on a menu, guest check, event or group contract or other document that a percentage gratuity or tip will be added, that payment should be reported to the State and to the IRS as wages. Similarly, if a service charge is utilized for compensation, it should be treated the same way for tax purposes. If a point of sale or other automated system fills in the amount of the gratuity on a guest check or payment card form, most auditors will see that as a service charge or automatic gratuity.

The impact of this change will be to increase the amount of payroll taxes owed on tips and to reduce the IRS Section 45B credit due to employers for taxes on gratuities. For more information, consult your tax preparer.

Sex Trafficking Prevention Training

A law was passed during the 2018 legislative session that requires employees of hotels and motels in Minnesota to be trained to recognize sex trafficking. Any property with a hotel license must provide the training; those with a resort license are exempt (but are encouraged to access the materials). Please note that a property could have both types of licenses. If you are not sure which type your property holds, please contact the MDH Food, Pools and Lodging Services section at (651) 201-4500 or: **health.foodlodging@state.mn.us**.

The required Sex Trafficking Prevention and Response Training materials, which were developed in partnership with Hospitality Minnesota, were released by the Minnesota Department of Health on November 1, 2018. Properties were required to have the new training completed by November 28, 2018. New employees must be trained within 90 days of hire. Operators are also required to post and maintain approved posters on sex trafficking in a location visible to all staff, conduct annual training and support an ongoing awareness campaign for employees. These requirements are tied to hotel and motel licensing.

Training materials include a manager and owner training toolkit, trainee guide, poster set for display, and guided training presentation. They may be accessed at: **Sex Trafficking Prevention and Response Training for the Minnesota Lodging Industry - Minnesota Department of Health (state.mn.us)**

Termination of Employment

Minnesota is an "employment at will" state. This means that employees work "at the will of" the employer and generally may be terminated or demoted for any reason or for no reason at all. However, there are many exceptions to this rule, including non-discrimination statutes (based on race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age), non-retaliation for engaging in statutorily protected conduct or opposing unlawful practices ("whistle-blowing"), and an unwillingness to engage in illegal activities, to name a few. We suggest checking your Association's "HR Toolkit" for best practices in this area.

Discharged Employees: Discharged employees must be paid all earned wages within 24 hours of their demand for wages. An employer must give a truthful reason why an employee was terminated, if requested in writing by the employee. Request must be made in writing by the employee within 15 working days of termination. The employer has 10 working days from receipt of the request to give a truthful reason in writing for the termination. The employer's communication of the truthful reason for an employee's termination to an employee cannot be the basis of any action for defamation by the employee against the employer.

Employees Who Voluntarily Quit: The employer is only required to pay the employee at the next regularly scheduled pay period if it is more than five days away. If the pay period is less than five days away, the employer may delay payment until the second scheduled pay period as long as it is within 20 days of the employees' end date.

Benefit Disbursement: Upon termination of an employee, a company is obligated to pay whatever was agreed upon. Any benefits such as vacation time that were earned by an employee must be paid out. Unused sick pay is generally not considered a benefit to be paid in that it is only earned if an employee is sick. This can become an issue, however, if company policy allows unused sick pay to be converted to vacation pay. In this case there are no state statutes that govern the disbursement and it comes down to company policy. It is highly recommended to clearly define how disbursements of sick time will be handled for a discharged employee in the company policy manual.

Requirements for Keeping Employee Records: The Minnesota Department of Labor requires that the following records be kept by the employer for a period of three years after termination for each employee:

- Name
- Address
- Occupation
- Social Security Number
- Rate of pay
- Amount paid each pay period
- Deductions (taxes, insurance, union dues, other)
- Hours worked each day and each workweek
- Beginning and ending times, with AM and PM designations
- A record of free meals accepted for the purpose of using meal credit
- Signed tip statements
- Proof of age for all minors

Tips

The state regulation on tip credit is stricter than federal law; therefore, it applies to ALL employers in Minnesota.

Tipped Employee Definitions:

- ***Federal Definition*:** A "Tipped Employee" is one who customarily and regularly receives more than $30 a month in tips. All tips received by a "Tipped Employee" shall be retained by the employee.

- ***Minnesota Definition:*** A service person must receive at least $35 per month in tips to be defined as a "Tipped Employee."
- ***IRS Definition:*** The IRS defines a "Tipped Employee" as anyone receiving $20 or more a month in tips.

Tip Credit: ***State:*** There is no tip credit allowed for businesses operating in the state of Minnesota. Employers must pay at least the minimum wage to those employees who earn tips.

Tip Reporting Compliance Agreements: The IRS is seeking to more strongly enforce the underreporting of tips through "voluntary" agreements with restaurant businesses. These agreements are called the Tip Rate Determination Agreement (TRDA) or the Tip Rate Alternative Commitment (TRAC).

The differences between these two are as follows:

TRDA	**TRAC**
Requires the IRS to work with the business to arrive at a tip rate for its various occupations.	Does not require that a tip rate be established but it does require the employer to: ▪ establish a procedure where a directly tipped employee is provided (not less than monthly) a written statement of charged tips attributed to the employee. ▪ implement a procedure for the employees to verify or correct any statement of attributed tips. ▪ adopt a method where an indirectly-tipped employee reports his/her tips (no less than monthly), and ▪ establish a procedure where a written statement is prepared and processed (no less than monthly) reflecting all cash tips attributable to sales of the directly tipped employee.
Requires the employee to enter into a Tipped Employee Participation Agreement (TEPA) with employer.	Does not require an agreement between the employee and the employer.
Requires the employer to get 75% of the employees to sign TEPAs and report at or above the determined rate.	Affects all (100%) employees.

Provides that if employees fail to report at or above the determined rate, the employer will provide the names of those employees, their SSNs, job classification, sales, hours worked and amount of tips reported.	Provides that if the employees of a business collectively underreport their tip income, tip examinations may occur but only for those employees that underreport.
Has no specific education requirement.	Includes a commitment by the employer to educate and re-educate quarterly all directly and indirectly tipped employees and new hires of their statutory requirement to report all tips to their employer.

In return, the IRS has granted immunity from "employer-only" and "employer-first" tip audits for periods as far back as 1988, and the IRS will not bill you for FICA taxes on unreported tips, unless they determine first through an audit of an employee, that you owe additional FICA taxes.

Whether or not you sign is entirely up to you. However, we must warn you that the IRS has definitely stepped up its efforts to get people on board. By not signing, you may risk a tip audit and be faced with paying FICA taxes on all unreported tips from your location over the past several years. Each individual business should determine their liability for underreported tips and make a conscientious decision as to whether or not it should sign a TRAC or TRDA agreement.

For additional information from the IRS on tip record keeping and reporting, including on voluntary tip compliance agreements, visit the IRS website at: **https://www.irs.gov/businesses/small-businesses-self-employed/tip-recordkeeping-and-reporting**

Attributed Tip Income Program (ATIP): The Attributed Tip Income Program (ATIP) was initiated by the IRS to offer employers in the food and beverage industry an additional tip reporting program. ATIP reduces industry recordkeeping burdens, has simple enrollment requirements and promotes reporting tips on federal income tax returns. ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements. However, ATIP does not require employers to meet with the IRS to determine tip rates or eligibility. Employers are not required to sign an agreement with the IRS to participate. Like other tip reporting programs, participation by employers and their employees is voluntary. Employers who participate in ATIP report the tip income of employees based on a formula that uses a percentage of gross receipts, which are generally attributed among employees based on the practices of the restaurant.

Employers receive these benefits by participating in ATIP:

- The IRS will not initiate an "employer-only" 3121(q) examination during the period the employer participates in ATIP.
- Tip reporting is simplified and, in many cases, employers will not have to receive and process tip records from participating employees.

- Enrollment is simple. There are no one-on-one meetings with the IRS and no agreements to sign. Employers elect participation in ATIP by checking the designated box on Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.

Employee benefits include:

- Participating employees do not have to keep a daily tip log or other tip records.
- The IRS will not initiate a tip examination during the period the employer and employee participate in ATIP.
- The improved income reporting procedures could help employees qualify for loans or other financing.
- Employees who work for a participating employer can easily elect to participate in ATIP by signing an agreement with their employer to have their tip income computed under the program and reported as wages.

Some general requirements for participating restaurants:

- The employer annually elects to participate in ATIP and uses the prescribed methodology for reporting tips by filing Form 8027 and checks the ATIP participation box. Simplified filing is provided for small establishments not required to file Form 8027.
- Employer's establishment must have at least 20% of gross receipts as charged receipts that reflect a charged tip.
- At least 75% of tipped employees must agree to participate in the program.
- Employer reports attributed tips on Employees' Forms W-2 and pays taxes using the formula tip rate.
- The formula tip rate is the charged tip rate minus two percent – the two percent takes into account a lower cash tip rate.
- The charged tip rate is based on information from the establishment's Form 8027.

ATIP is for food and beverage employers. Details and requirements for participation for employers and employees are available at: **www.irs.gov/pub/irs-drop/rp-06-30.pdf**.

Tip Reporting: By law, servers are required to report ALL of their tips to their employer for tax purposes. The Internal Revenue Service code requires that tipped employees maintain accurate daily records of tip income and that they make written reports of such income at least once a month to their employer. (Employers may require it more often; many require it each payroll period.) Failure to do so may result in prosecution by the IRS.

In addition, restaurants with 10 or more employees at which tipping is customary are responsible for providing the IRS with information on the tipping practices and reporting at their establishment(s). Form 8027 must be sent to the IRS annually on or before the last day of February. Operators must also inform their employees on the law and do an "allocation" for directly tipped employees such as

waiters, waitresses and bartenders if reported tips are less than 8% of the establishment's gross annual sales. Allocation amounts must be on the employees' W-2 forms, which are given to them in January.

Summary of the Tip Reporting Law:

- Employers must annually file a report, Form 8027, by the last day of February each year for the preceding year.
- Businesses required to comply include all food or beverage establishments where tipping is customary, and which have more than 10 employees (tipped & non tipped).
- Employers must gather the information they need for the reports.
- If the total reported tips are not equal to at least 8% of the establishment's gross receipts, the shortfall must be allocated.
- Employers must use either the seven-step IRS formula or a "good faith" agreement. Those with fewer than 25 employees may use either "hours worked" or "individual gross receipts" to determine the allocation amounts for directly tipped employees with a reporting shortfall. Employers with 25 employees or more are required to use the "individual gross receipts" method for employee allocation.
- No allocation is necessary if the establishment's employees, as a group, are reporting total tips equal to or in excess of 8% of the establishment's gross receipts.
- Employers should inform their employees that tips are taxable income, and ALL tip income must be reported.
- Tips must be voluntarily reported.
- Only voluntarily reported tips are subject to withholding.
- Employers are NOT to withhold from allocated amounts. Allocation amounts are for information only—to both the employee and the IRS.
- Service charges are not considered tips for the purpose of tip reporting.
- W-2 forms for tipped employees should reflect tips reported by the employer and any tips allocated for employees who report less than 8% of gross receipts computed as requested.

Note: All establishments of the same employer are combined for purposes of determining coverage for tip reporting purposes, but each establishment must report separately. Separated units within the same building (*e.g.*, coffee shops and dining rooms, or bar and snack shops) may be treated as separate establishments for tip reporting and for allocation purposes, if the customers of the different foodservice operations sit separately and if gross receipts for each operation are recorded separately. Operations occupying the same space at different times such as a lunch hour cafeteria or buffet which becomes an evening dining room may be treated as separate establishments, provided the gross receipts are kept separately.

State: Minnesota law requires the employer to obtain and retain a signed tip statement each pay period. All records must be retained for a period of three years.

Holding Checks for Tip Reports: Minnesota employers ***may not*** hold an employee's check until a signed tip statement for that period is received.

Tips Charged to Payment Cards: Effective August 1, 2024, employees must receive the full amount of tips paid by card or e-payment. This is a departure from the Department of Labor's past position, which allowed the employer to reduce the amount of credit or debit card tips paid over to the employee by an amount no greater than that charged by the processing company. Specifically, Minnesota law was amended in the 2024 legislative session to clarify that gratuities received through credit card, debit, or other electronic payment shall be credited to the pay period when such gratuity was received, and the "full amount of the gratuity indicated in the payment" must be distributed to the employee no later than the next scheduled pay period.

Tip Pooling: ***Federal:*** Allows mandatory tip sharing. However, **Minnesota law, which specifically prohibits mandatory pooling, is considered more beneficial to the employee and therefore takes precedence**.

Note: The Minnesota Department of Labor and Industry is aggressive in its enforcement in this area. There have been high profile lawsuits with large settlements in cases where this law was not followed. We caution all employers to be aware of this portion of the state law.

State: "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge is not the property of the employee.

No employer may require an employee to contribute or share a gratuity received by the employee with the employer or other employees or to contribute any or all of the gratuity to a fund or pool operated for the benefit of the employer or employees. The law goes on to say that the law does not prevent an employee from voluntarily sharing gratuities with other employees. The agreement to share gratuities must be made by the employees without employer coercion or participation, except that an employer may:

- upon the request of employees, safeguard gratuities to be shared by employees and disburse shared gratuities to employees participating in the agreement;
- report the amounts received as required for tax purposes; and
- post a copy of this section for the information of employees.

The law was written with table service restaurants and full-service hotels in mind. In a fast casual or quick service environment, the traditional "personal service" environment isn't created, and the law doesn't work. Several national chains have implemented "tip box" or "tip jar" systems where the

proceeds are shared by all the employees in the location except for managers or supervisors. One chain labels their tip jar "Team Tips." Other wording such as "shared tips" or "tips for the team" would accomplish the same result, which is to provide clear notice that the tip is not the property of an individual employee. A 2018 amendment to the Federal Fair Labor Standards Act prohibits the sharing or pooling of tips with the company, managers or supervisors.

Divided Gratuities: When more than one direct-service employee provides direct service to a customer or customers in a given situation such as banquets, cocktail and foodservice combinations, or other combinations, money presented by the customers, guests, or patrons as a gratuity and divided among the direct-service employees is not a violation of the tip pooling restriction contained in Minnesota statutes.

Tips and Workers' Compensation: Tip income is not to be included in the calculation of workers' compensation rates.

FICA & Medicare Tax on Tips: Federal law requires all employers to pay Federal Insurance Contributions Act (FICA) social security tax and Medicare tax on all reported tips. NOTE: The Internal Revenue Service (IRS) has been auditing employees and assessing back taxes for previously unreported tips. It is also assessing employers for the FICA payments due on these unreported tips from previous years.

FICA Tax Credit: Under federal law, many restaurants are eligible to receive a tax credit for FICA taxes paid on tip income above the federal minimum wage. You are eligible for this credit if you pay FICA taxes on tips and are an establishment that serves food or beverages for on-premises consumption. Taxes paid by employers on tips received by delivery persons, for example, are not eligible for the credit. This tax credit is non-refundable. So, in order to receive it, you must have federal income tax liability to offset the credit. The federal income tax liability can be past, present or future. This means that if you do not have liability in a given year, you can carry it forward or backward. You can carry it forward for up to 15 years and/or carry it back for three years. The law does not change any of the present requirements for the withholding or payment of FICA tax or any other tax for either the employer or the employee.

The credit applies only to tips that are fully voluntary. The credit does not apply to mandatory tips for large parties or to service charges. To file for the credit, operators should use Form 8846, Credit For Employer Social Security and Medicare Taxes Paid on Certain Employee Tips, which can be obtained by contacting the IRS at (800) 829-3676 or: **About Form 8846, Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips | Internal Revenue Service (irs.gov)**

Training Wage

Employers may utilize a training wage for employees under 20 years of age. For 2022 these employees can be paid $8.85 per hour during the first 90 consecutive calendar days of their employment. Each year, the wage will be indexed for inflation, with a new wage becoming effective on January 1 of the following year. An employer may not take any action to displace an employee in order to hire an employee at the training wage. See pages 30-32 for information specific to Minneapolis and St Paul.

Also see the section on Minimum Wage Rates on page 29.

Unemployment Compensation

The U.S. Department of Labor's Unemployment Insurance (UI) program provides for payment of unemployment benefits to eligible workers who become unemployed through no fault of their own and meet certain other state eligibility requirements. Although Unemployment Insurance is a U.S. Department of Labor program, it is administered by state agencies, such as the Minnesota Department of Employment & Economic Development (DEED), across America.

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

Minnesota employers pay a quarterly unemployment tax on the actual wage paid to each employee up to a maximum of $42,000 in annual earnings. The maximum wage is set annually by the state and can be found at **www.uimn.org** in the "Employer Information" section.

Wages include all payments to employees for services performed. Wages can include salary, cash wages, commissions, bonuses, tips, profit sharing, the value of meals and lodging and other compensation. The tax is deposited in the Minnesota UI Fund, which is used to pay unemployment benefits to eligible applicants who are unemployed.

The issue of unemployment compensation is very complex. For specific information or questions on unemployment compensation, your account or any needed forms, we encourage you to contact the Minnesota Department of Economic Security or to search their website at **www.uimn.org**. There are two online documents which are helpful to employers and may answer some of your questions:

- the employer handbook: **www.uimn.org/uimn/employers/publications/emp-hbook/index.jsp**
- the self-service system user guide: **www.uimn.org/uimn/employers/help-and-support/employer-user-guide/ index.jsp**

Uniforms

Federal: If a uniform is required, an employer must provide it to a minimum wage employee. Workers who earn above the minimum wage may be charged for uniforms only to the extent that the charges do not reduce wages below the minimum wage. Tipped employees who earn the minimum wage cannot be required to pay for uniforms from their tips. In a ruling by the U.S. Department of Labor, employers are not allowed to collect a security deposit for the uniform before a minimum wage employee starts work, as it would have the effect of reducing the worker's wages below the minimum wage.

State: Same as federal with the exception that state law allows a reasonable deposit (not to exceed $50), which is returned to the employee when the employee returns the uniform.

If the uniform required is of a type that could commonly be worn outside of the work arena, such as a standard white shirt or black pants, you may not be required to provide it. Check with the Minnesota Department of Labor and Industry regarding your specific uniform if you have questions in this area at **www.dli.mn.gov.**

Uniform Maintenance: ***Federal:*** If a uniform is of a "wash & wear" material and can be laundered with the regular family wash, it is not necessary to pay employees for maintaining these uniforms. However, for those uniforms that must have special cleaning procedures (such as dry cleaning) the employer must provide uniform cleaning or reimburse the employee for the cost of cleaning up to an amount set by the U.S. Department of Labor. The most recent level of reimbursement is 85 cents per day, subject to change by the department in the future.

State: Similar to federal guidelines.

U.S. Military Personnel, National Guard, and FEMA Reservists

Employers must allow regular employees who are members of the uniformed services, including the reserves or National Guard, unpaid time off for military duty and training. Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employers are required to allow reservists to leave and retain their jobs and benefits upon their return to civic life following voluntary or involuntary service to the United States. Under the USERRA, employers are not required to pay employees on active military duty; however, an employer must hold a job and retain all benefits for a returning vet. The employer may also be required to return the employee at a higher job level and benefit level if the employee would have likely accrued such advancement had he or she not been on active duty (often referred to as the "escalator principle"). The Act also requires an employer to make reasonable accommodations for or provide current job training to a returning vet who may have an

injury or be lacking current and fresh job skills. On September 29, 2022, President Biden signed the Civilian Reservist Emergency Workforce Act of 2021, or the "CREW Act", which extends the employment protections of USERRA to Federal Emergency Management Agency (FEMA) reservists who deploy to major disaster sites.

For more information, visit: **https://www.dol.gov/agencies/vets/programs/userra/USERRA-Pocket-Guide**

Voting Time

Every Minnesota employee who is eligible to vote in an election has the right to be absent from work for the time necessary to appear at the employee's polling place, cast a ballot, and return to work on the day of that election or during the time period allowed for voting in person before election day, without penalty or deduction from salary or wages because of the absence. An employer or other person may not directly or indirectly refuse, abridge, or interfere with this right or any other election right of an employee.

For purposes of voting time, "election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of U.S. senator or U.S. representative, an election to fill a vacancy in nomination for a constitutional office, an election to fill a vacancy in the office of state senator or state representative, or a presidential nomination primary. An election held entirely for local office such as the school board or city council or for a local bond issue or referendum is not covered by this provision, although some employers may choose to provide time off to vote in those elections.

An individual who is selected to serve as an election judge may, after giving an employer at least 20 days' written notice, be absent from a place of work for the purpose of serving as an election judge without penalty. An employer may reduce the salary or wages of an employee serving as an election judge by the amount paid to the election judge by the appointing authority during the time the employee was absent from the place of employment.

The written request to be absent from work must be accompanied by a certification from the appointing authority stating the hourly compensation to be paid the employee for service as an election judge and the hours during which the employee will serve. An employer may restrict the number of persons to be absent from work for the purpose of serving as an election judge to no more than 20 percent of the total work force at any single worksite.

Wage Disclosure Protection

An employer may not:

- require an employee not to disclose their wages or terms of employment to others as a condition of employment;
- require an employee to sign a waiver or other document agreeing not to disclose their wages; or
- take any adverse action against an employee for disclosing their wages or discussing another employee's wages that have been disclosed voluntarily.

The law does not:

- require any employee to disclose their wages;
- permit an employee to disclose proprietary information, trade secret information or data that is otherwise subject to legal privilege or protected by law;
- diminish any existing rights under the National Labor Relations Act; or
- permit an employee to disclose wage information of other employees to a competitor of their employer.

Employers are required to include a notice in their employee handbook, if they have one, about these rights. If an employer provides an employee handbook to its employee, that handbook must include a notice of an employee's rights and remedies regarding the above wage disclosure protections. Employers may not retaliate or discriminate against employees for asserting any wage disclosure protection rights.

Wage Theft: Written Notices and Statements of Earnings

It is illegal for an employer to, with the intent to defraud, fail to pay a worker wages that they have earned. During 2019, Minnesota passed a new wage theft law that expressly defines wage theft and lists it under the crime of theft in **Minn. Stat. § 609.52**. Notably, the law also expressly clarifies that wages—which must be paid once every 31 days (there is a different standard for "transitory employees") on a regular payday—includes "salary, earnings and gratuities." The law also provides additional authority to the Minnesota Department of Labor and the Attorney General's Office to investigate allegations of wage theft and bring civil enforcement actions and provides for a potential misdemeanor for an employer that hinders or delays a Department of Labor in the performance of their duties. The law prohibits an employer from retaliating against an employee for asserting their rights under the law.

The new state law contains additional requirements for employers, including providing new employees with a notice about their rights, providing additional information on employee earnings statements, and additional record keeping requirements. For further information, please review the

Minnesota Department of Labor's guidance for employers: *Guidance for employers on Minnesota's new wage theft law*:
https://www.dli.mn.gov/sites/default/files/pdf/wage_theft_summary_employers.pdf

Key provisions in the new law:

Written Notice to New Employees: Employers must provide written notices to new employees and keep a copy signed by the employee to document the process. The notice must include a statement in multiple languages informing employees they may request the notice in another language (the Department of Labor provides template notices in multiple languages for employers to use which may be accessed here: **https://www.dli.mn.gov/business/employment-practices/employee-notice**).

This written notice must include:

- the employee's rate or rates of pay and basis thereof, including whether the employee is paid hourly, by shift, day, week, salary, piece, commission, or other method;
- allowances, if any, claimed pursuant to permitted meals and lodging;
- paid vacation, sick time, or other paid time-off accruals and terms of use;
- the employee's employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of Minnesota Chapter 177, and on what basis;
- a list of deductions that may be made from the employee's pay;
- the number of days in the pay period, the regularly scheduled pay day, and the pay day on which the employee will receive the first payment of wages earned;
- legal name of the employer, as well as the operating name, if different from the legal name;
- physical address of the employer's main office or principal place of business, and mailing address, if different; and
- telephone number of the employer.

Employers must have new employees sign a copy of the notice described above to acknowledge receipt of the notice and retain that signed copy. Further, employers must provide employees any written changes to the information contained in this notice prior to the date those changes take effect.

In addition, the Department also provides a sample template employer notice that businesses can use to fulfill the notice requirement under the law:
https://www.dli.mn.gov/sites/default/files/pdf/employee_notice_form.pdf

Statement of Earnings: Minnesota law requires all employers to provide paycheck stubs or a written statement of earnings. At the end of each pay period, the employer must give each employee an earnings statement, either in writing or by electronic means, covering that pay period. If an employer chooses to provide the required earning statement by electronic means, the employer must provide employee access to an employer-owned computer during the employee's regular working hours to review and print earnings statements, and must make statements available for such review and

printing for a period of three years. Additionally, employers must provide employees written statements of earnings if the employer has received at least 24 hours notice from an employee requesting such statements. After receipt of such a request, the employer must comply with it on an ongoing basis.

The earnings statement may be in any form determined by the employer, but must include:

- name of the employee;
- the employee's rate or rates of pay and basis thereof, including whether the employee is paid hourly, by shift, day, week, salary, piece, commission, or other method;
- allowances, if any, claimed pursuant to permitted meals and lodging;
- total number of hours worked by the employee;
- total amount of gross pay earned by the employee during that period;
- list of deductions made from the employee's pay;
- net amount of pay after all deductions are made;
- date on which the pay period ends;
- legal name of the employer, as well as the operating name, if different from the legal name;
- physical address of the employer's main office or principal place of business, and mailing address, if different; and
- telephone number of the employer.

Recordkeeping: Employers must keep a copy of the notice given to each employee (signed by the employee), copies of any written changes to that notice, and a list of personnel policies that were provided to each employee (with a brief description of each, along with the date each was provided). These records must be kept at the place where employees are working or at least maintained in a manner so that they can be produced to the Department of Labor within 72 hours upon request.

Minneapolis Wage Theft Law: Minneapolis also passed its own wage theft ordinance which went into effect on January 1, 2020. The law includes many of the same provisions included in the state law, but also requires employers to make certain specific disclosures to employees on a pre-hire employee notice and on their statement of earnings regarding the employee's sick and safe time benefits (*i.e.*, how the benefits accrue and the current balance) under the city's earned sick and safe time ordinance. The ordinance requires employers to give prospective employees a pre-hire notice. Importantly, Minneapolis has taken the position that the pre-hire notice must be given to *all employees*, even those already on staff if they have not received the notice before. For more information on complying with the Minneapolis ordinance, please visit:
http://minimumwage.minneapolismn.gov/wagetheft.html

Weapons in the Workplace

An employer may establish policies that prohibit weapons, including handguns, to be carried by its employees while they act in the course and scope of their employment; however, employers may not

prohibit the lawful carry or possession of firearms in a parking facility or parking area. Such policies should be in writing, should make clear that the rule applies to those who may have a permit to carry a concealed firearm, and should also reference the employer's policy on violence prevention and reporting. See **Minn. Stat. § 624.714**

Also see the section on Conceal and Carry Gun Law on page 73.

Work Campers

Some campground or resort owners employ workers who receive a seasonal campsite and hookups as all or part of their compensation. In most cases, these workers are employees and not independent contractors. The employer needs to pay payroll taxes, unemployment compensation and other taxes on the worker's earnings. There is an IRS provision, however, that is helpful:

You do not include in an employee's income the value of meals and lodging provided to them and their family at no charge if the following conditions are met:

The meals are:

- furnished on the business premises of the employer, and
- furnished for the convenience of the employer.

The lodging is:

- furnished on the business premises of the employer,
- furnished for the convenience of the employer, and
- a condition of employment, meaning it must be accepted in order to be able to properly perform your duties.

There is more information in **IRS publication 525** under meals and lodging. Work campers should not be charged more for their sites and hookups than the regular public price. The amount paid for hours worked must equal at least the state minimum wage. It is considered best practice to have a written understanding with work campers as to what pay and benefits they will receive and what work is expected of them.

Workers' Compensation

Every employer is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment. Minnesota law also requires employers who have not been approved for self-insurance to provide workers' compensation insurance for their employees. Employers are generally defined as those who hire others to perform services. Employees are

generally defined as persons performing services for another for hire including minors and workers who are not citizens. Some entities, if they have no employees, are not employers so they have no one to insure, such as:

Sole proprietorships: Individually or family run, non-incorporated businesses owned by one person including true independent contractors, where any employees are immediate family members (a spouse, parent or child, regardless of age). Note: Once a non-immediate family member is hired, insurance is required.

Partnerships: Partners in business or farm operations where every employee is a partner or a spouse, parent or child of a partner, regardless of age.

Other categories of employment are excluded from the workers' compensation coverage requirement:

- ***Closely held corporations:*** Executive officers owning 25 percent or more of a closely held corporation or a spouse, parent or child of the executive officer, regardless of age, are automatically excluded unless the business elects to cover them. To qualify for this exemption, such corporations must have 10 or fewer shareholders and less than 22,880 hours of payroll in the preceding calendar year. Employees of such a corporation who are more distantly related by blood or marriage to an executive officer of the corporation may also be excluded by filing a written request to be excluded. This includes brothers, sisters, aunts, uncles, grandparents and grandchildren. Cousins may not be excluded from coverage.
- ***Limited liability companies:*** There are exclusions for managers and members of their families that are similar to the exclusions for closely held corporations.
- ***Casual employees:*** An employee who is not working in the usual course of the trade, business, profession or occupation of the employer and both the employee and employer understand that the employment is meant to be for one time or infrequent rather than permanent or periodically regular.
- ***Household workers:*** This includes a domestic, repairer, grounds keeper or maintenance worker at a private household who earns less than $1,000 cash during a quarter of the year unless more than $1,000 was earned in any quarter of the previous year.

Election of Coverage: The Minnesota Workers' Compensation Act provides that insurance coverage may be purchased for many of the above-named classes of persons. When such coverage is provided, the insured person becomes an "employee" as defined within the statute. When coverage is elected, written notice must be provided to the insurer and becomes effective the day following receipt of the notice or at a later date requested in the notice.

An employer contracting with an independent contractor may also provide insurance for that entity. The provider of the insurance may only charge the independent contractor a fee for the coverage if

the independent contractor elects in writing to be covered and is issued an endorsement setting forth the terms of the coverage, the names of the persons covered, the fee charged and how the fee is calculated.

Tips and Workers' Compensation: Tip income is not to be included in the calculation of workers' compensation rates.

The issue of workers' compensation is very complex. For specific information or questions on workers' compensation, we encourage you to contact the Workers' Compensation Hotline at the Minnesota Department of Labor at (651) 284-5005 or (800) DIAL-DLI (800-342-5354) or visit: **www.dli.mn.gov/business/workers-compensation-businesses**.

Youth Wage

For the purposes of the *state* minimum wage, employers may utilize a youth wage for employees under 18 years of age. In 2024 these employees can be paid $8.85 per hour. The law states that the youth wage applies only to large employers since it is at the same rate as the small employer provision. Each year, the wage will be indexed for inflation, with a new wage becoming effective on January 1 of the following year. The youth wage is applicable to all employers, no matter the sales volume. However, as noted above, the youth wage was eliminated effective January 1, 2025, as it is effectively being replaced by the general minimum wage. See pages 30-32 for the standards in Minneapolis and St. Paul.

Also see the section on Minimum Wage Rates on page 31.

Accelerated June Tax Payments

Due to a 2021 law change supported by Hospitality Minnesota, operators no longer need to pay accelerated June payments on sales tax. Businesses with over $250,000 in alcoholic beverage tax liability must still remit an accelerated June payment equal to 84.5% of their June liability two business days before June 30.

Americans With Disabilities Act (ADA)

Note: Please pay particular attention to this section of the guide. A number of lawsuits have been filed recently in Minnesota alleging violations of the ADA. In some cases, the claims could have been avoided with improved employee training and some attention to barrier removal.

Detailed information about the ADA is available at: **www.ada.gov**. Technical standards for accessibility are found in Minnesota state building code. Since Minnesota building code goes above and beyond the ADA in many instances, it is important that the building code be used for technical requirements. *For ADA requirements related to employment, see pages 9-10*. The Minnesota Council on Disability is a good resource for information and assistance with specific questions. The organization can be reached at (651) 361-7800 or: **www.disability.state.mn.us**.

The Americans with Disabilities Act is designed to protect the rights of disabled persons to access public accommodations, transportation, communications and employment. For guest accommodation, the ADA requires you to:

- not impose eligibility criteria that could limit the opportunities of people with disabilities to fully enjoy the facilities and services provided, unless it can be shown these criteria are necessary for providing these services;
- make reasonable modifications to policies and practices to accommodate individuals with disabilities, unless doing so would fundamentally alter the nature of the accommodations or services provided;
- provide "auxiliary aids and services" to make sure people with disabilities have equal access to goods and services, unless it can be shown that this is an undue burden or fundamentally alters the nature of the services provided;
- remove architectural and communications barriers in existing facilities wherever this is readily achievable, *i.e.*, easily accomplished without much difficulty or expense;
- consider any readily achievable alternative ways of making services or accommodations available, if barrier removal is not readily achievable; and

- ensure that front-of-the-house employees are trained to assist guests with disabilities and are aware of accessible entrances, parking, tables, television captioning, service counters, restrooms and other accommodations provided for access.

Barrier Removal Plan: The ADA requires that businesses have an "ongoing obligation" to remove architectural barriers in existing facilities when it is "readily achievable" to do so. Readily achievable means "easily accomplishable without much difficulty or expense." This requirement is based on the size and resources of a business. Therefore, businesses with more resources are expected to remove more barriers than businesses with fewer resources.

Most businesses will need to prioritize the removal of barriers over a period of time. It is helpful to have a barrier removal plan on hand, which can be useful in discussions with inspectors or in the event that ADA litigation is threatened or initiated. The Minnesota Council on Disability has helpful resources for prioritizing barriers for removal and creating a barrier removal plan: **www.disability.state.mn.us/information-and-assistance/protect-your- business-remove-barriers/**

60-Day Notice of Architectural Barrier: A new law was adopted in 2017 with the expectation of reducing the likelihood of lawsuits under the ADA and its state law counterpart, the Minnesota Human Rights Act. The amendment to the Minnesota Human Rights Act requires that a potential plaintiff provide at least 60 days' notice to a business which they believe has a barrier which violates the Americans with Disabilities Act prior to a lawsuit being filed. The notice is not required if the person filing the suit (the plaintiff in legal terminology) is acting without the assistance of an attorney and is not themselves an attorney and may not apply in federal court.

Recreation Facilities/Swimming Pools: Updated standards for public accommodations were issued in 2010 and included recreation facilities such as swimming pools, exercise rooms, fishing piers and playgrounds. The provision that received the most attention was the requirement that swimming pools operated by hotels, resorts, campgrounds and other businesses must be accessible if removing barriers to access are readily achievable. The allowable methods of providing access include a sloped entry or a pool lift. The U.S. Department of Justice ruling is that lifts must be permanently mounted at the pool or spa and that a separate lift must be provided for each "body of water," such as a pool, spa or hot tub. This interpretation has been challenged and may change in the future.

If it isn't readily achievable for your business to provide access to your pool or spa, best practices would include documenting (1) how you arrived at that decision, (2) why providing such access isn't readily achievable, (3) your plans for removing other access barriers at your property, and (4) a list of the barriers that have already been removed. A well-documented file can be helpful if there is an enforcement action or a threat of litigation. More information is available at: **www.ada.gov**

Service Animals: The Americans with Disabilities Act requires hospitality businesses to accommodate the needs of guests with disabilities, including their use of service animals. Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, or calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Under the ADA, businesses and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. Under the ADA, service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal or other effective controls.

When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions:

- Is the dog a service animal required because of a disability?
- What work or task has the dog been trained to perform?

Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog or ask that the dog demonstrate its ability to perform the work or task.

As of August 1, 2018, it is a crime to misrepresent a pet as a service animal. While the law has not changed, there are now enforceable penalties for service animal fraud. Hospitality Minnesota has free resources related to service animals:

- poster to display for customers that welcomes service animals and educates the public about the penalties for misrepresenting a service animal (note: poster is optional)
- employee training handout that explains the law related to misrepresentation of a service animal

A person with a disability cannot be asked to remove their service animal from the premises unless: (1) The dog is out of control and the handler does not take effective action to control it or (2) The dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises. People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals. If a business such as a hotel or resort normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal. Staff are not required to provide care or food for a service animal.

The ADA aims to make it possible for people with disabilities to independently enjoy all aspects of life and the ADA, though seemingly complex, provides important guidance for doing so. For more information, visit: **www.ada.gov**. Again, the Minnesota Council on Disability has excellent resources at: **www.disability.state.mn.us**.

Required Tax Deductions and Credits for Expenditures: To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses.

The tax credit is available to businesses with total revenues of $1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to $10,250 (maximum credit of $5,000). The tax credit can be used to offset the cost of:

- undertaking barrier removal and alterations to improve accessibility
- providing accessible formats such as Braille, large print and audio tape
- making available a sign language interpreter or a reader for customers or employees
- purchasing certain adaptive equipment

The tax deduction is available to all businesses, with a maximum deduction of $15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations. To learn more about the tax credit and tax deduction provisions, visit: **www.ada.gov/taxcred.htm**.

Communications Requirements for Guest Rooms Under the ADA: The 2010 Standards for Accessible Design, Section 806.3, requires communications features in some guest rooms such as accessible alarms that are connected to the building's emergency alarm system; visible notification devices to alert occupants of incoming calls, a door knock or bell; telephones with volume controls; and telephones that can facilitate the use of a Text Telephone (TTY). The number of communication devices required is dependent on the total number of guest rooms. Keep in mind that technology changes and evolves.

Facilities also need to provide assistive listening devices in meeting rooms for conference attendees, if requested. Other considerations:

- Staff should be prepared to receive telephone calls via a Relay Service, which, for those who are unfamiliar with them, can be mistaken as telemarketing or prank calls. A relay call allows a person who is deaf, hard of hearing, deaf blind or person with a speech disability to place and receive telephone calls. A communication assistant (CA) relays the call back and forth between the person with a disability and the other party to the call. There may be a pause when the call is answered, and then the Communication Assistant will introduce themselves and give their ID number. There may also be pauses during the conversation while the CA or interpreter is relaying what is being said. Train your staff to recognize these calls and ensure they do not hang-up on a patron. More information about Telecommunications Relay Service (TRS) can be found on the Federal Communications Commission (FCC) website: **www.fcc.gov/guides/telecommunications-relay-service-trs**.
- Keep a pad of paper and pen at your front desk. It may be easiest for your staff to communicate with a person who is deaf or hard of hearing by writing notes back and forth.

Closed Captioning on Televisions: The ADA clearly requires that businesses provide reasonable accommodations to persons with disabilities. That goes beyond physical access. For those who are deaf or hard of hearing, turning television captioning on when requested by a guest is a reasonable accommodation and is required by law. It is also a good business practice.

What should you do to comply with the ADA and be helpful to guests and potential guests who are deaf or hard of hearing?

- Train your staff on how to turn on the captioning on each television in your business.
- Establish a policy that captioning is to be turned on whenever it is requested.
- Verify that you and your staff know how to find each remote control that may be needed.
- Include a policy on captioning in employee training and orientation.

Website Accessibility Requirements: The U.S. Department of Justice administers the Americans with Disabilities Act and requires that websites be accessible to those with disabilities.

What is digital accessibility? It is about making web content work with the technologies people use, whether that is a mobile phone or a dedicated assistive device such as a screen reader. It is the digital equivalent of including access ramps and curb cuts in the built environment to remove barriers to access. Online, incorporating accessibility features, such as alternative text, captioning photographs, avoiding hard to access types of files and keyboard control, can improve the digital "environment."

Information on the details of making websites accessible is available from the Minnesota Council on Disability: **www. disability.state.mn.us/information-and-assistance/digital-accessibility/**. The site provides helpful links to a variety of resources and includes a digital toolkit.

This website accessibility topic is broad but some of the key issues are having content that works with screen reading software, including captions that describe pictures, charts and videos, allowing

alternate methods of navigation for those who are unable to use a mouse, and for lodging operators, taking certain actions to make sure their reservation systems, including online portals, meet certain accessibility standards. For example, the law provides that:

> **Reservations made by places of lodging:** A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party.
>
> - Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;
> - Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
> - Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;
> - Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and
> - Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

Aquatic Invasive Species

Minnesota residents and guests who use watercraft in Minnesota are required to be educated about the risks of spreading aquatic invasive species such as zebra mussels, spiny water fleas, Eurasian milfoil and other pests. The procedures include:

- An affirmation by those who purchase out-of-state fishing licenses that they have received information about preventing the spread of aquatic invasive species.
- An affirmation by those who register a watercraft in Minnesota that they have received information about preventing the spread of aquatic invasive species.

Resorts, campgrounds and other related hospitality businesses are encouraged to provide information to their guests about the risks of invasive species. More information is available from the Minnesota Department of Natural Resources at:
www.dnr.state.mn.us/invasives/aquatic/index.html.

Bad Checks

Business owners have the option to pursue various criminal and civil penalties on a dishonored check. A service charge may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if written notice of the service charge was conspicuously displayed on the premises when the check was issued. (The service charge may not exceed $30, unless the payee uses the services of a law enforcement agency to obtain payment of a dishonored check. A service charge of up to $35 may be imposed if the service charge is used to reimburse the law enforcement agency for its expenses.)

Also, when you receive a dishonored check, you may send a written notice of dishonor, which demands payment for the check and outlines the citation to the bad check law and a description of the penalties. If you do not receive payment for a dishonored check within 30 days of sending a written notice of dishonor, the check issuer is liable for the following:

- the amount of the check plus a civil penalty of up to $100, or 100% of the value of the check, whichever is greater;
- interest on the face value of the check from the date of dishonor; and
- reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over $1,250.

If the amount of the check and service charges has not been paid within 30 days of being mailed a notice of dishonor, a payee may also mail a written affidavit for the above liabilities by sending a copy of the law and a description of these liabilities to the bad check writer.

Steps for Collecting on a Bad Check:

1. Resubmit the check to the bank for a second time (just to be sure).
2. If returned again, assess a $30 or $35 collection fee. This must be posted to collect the fee.
3. Send a written notice of dishonor requesting payment for the check and the collection fee.
4. If not paid within 30 days, send a written affidavit, further outlining the penalties and liabilities.
5. If still not paid, contact the city or county attorney's office.

Bank Charges: A bank or other financial institution may not impose a service charge in excess of $4 for a dishonored check on any person other than the issuer of the check.

Credit Card Identification: Minnesota state law does not allow you to require, as a condition of acceptance of a check or as a means of identification, that the person presenting the check provide a credit card number. This does not prohibit you from requesting the person presenting the check to display a credit card, but the only information concerning the credit card which may be recorded is the type and issuer of the credit card and the expiration date.

Also see the section on Credit Card Regulations on page 73.

Bag Bans

A state law passed in 2017 prohibits any local unit of government from banning any type of bag for use by merchants, lodging establishments or foodservice providers. The provision preempted a Minneapolis bag ordinance. The Minneapolis ordinance included an exception for ready-to-eat food, but we have been concerned that other communities may not include that exception. The law does not prohibit a "bag tax" or fee on bags provided by businesses.

Minneapolis: Minneapolis subsequently passed an ordinance requiring a 5-cent charge on plastic and paper carry-out bags. *However, Minneapolis restaurants and other businesses that sell food are exempted from the ordinance*. More information is available from the City of Minneapolis at: **https://www.minneapolismn.gov/government/programs-initiatives/zero-waste/**

Duluth: The City of Duluth has passed a similar measure. Duluth's ordinance also exempts take out foods. More information is available from the City of Duluth at:
https://duluthmn.gov/city-clerk/plastic-carryout-bag-fee/about-plastic-carryout-bag-fees/

Edina: Edina's ordinance requiring a 5-cent charge on carryout bags became effective on July 1, 2024. Hospitality Minnesota successfully advocated for the exemption of restaurants from this charge, along with any other entities that meet the definition of a "food establishment" per Edina's City Code. More information is available from the City of Edina at:
https://www.edinamn.gov/2047/Carryout-Bag-Fee

Bedding – Sale of Used

Minnesota has specific laws (see **Minn. Stat. Chapter 325F**) regarding the sale of used bedding. The definition is broad and includes mattresses, box springs, cushions or pillows made for sleeping or reclining. There is a procedure for sterilizing used bedding for resale but it is complex and expensive. It is a misdemeanor to sell, lease or offer for sale or lease used bedding that hasn't been sterilized as provided in the law. The law doesn't prohibit giving used bedding away, but as a practical matter, it is difficult to donate used bedding because any charity or thrift shop to which old bedding is given has a hard time selling it lawfully.

Business Meal Deductibility

Federal law regulates the deductibility for business meals and entertainment.

TEMPORARY EXPANDED STATUS EXPIRED: effective January 1, 2023, business meals are no longer 100% deductible. As part of the federal stimulus bill passed in December 2020, business meals (food

and beverage) provided by a restaurant were 100% deductible in 2021 and 2022, rather than the typical 50% deduction. In 2023, the tax status of business meals returns to its previous status as follows:

Items that are 50% deductible include:

- travel meals (examples are truckers and salespeople who eat meals away from home);
- business meals;
- catered meals (including meals catered at a person's home or place of business);
- employer-provided meals to employees (employers other than restaurateurs);
- cover charges at nightclubs if used for entertainment purposes;
- amount paid to rent a room for a reception; and
- parking at an event, which is an entertainment deduction.

Items that are 100% deductible include:

- company picnics/holiday parties;
- holiday turkeys (or similar gifts);
- samples or promotional items;
- restaurant/catering food costs associated with selling to bona fide paying customers;
- employer-provided meals in which the employee pays fair market price (employer is not restaurateur or caterer);
- meals provided to restaurant/catering employees by the employer on premise; and
- meals and entertainment provided by employer as wages or compensation to employee.

Camper Cabin and Bunkhouses

Camper cabins and bunkhouses are exempt from floor space, air space or bed spacing requirements applicable to lodging establishments adopted by the Commissioner of Health. For the purposes of this exemption:

- "Bunkhouse" means a building, structure, or enclosure intended to sleep more than one person for up to three nights that does not include a kitchen or bathroom.
- "Camper cabin" means a permanent rustic enclosure with walls and a floor that does not include a kitchen or bath; is located in a state park or forest, at a resort or at a recreational camping area and is intended to be a place where sleeping accommodations are furnished to the public.

Carbon Monoxide Alarms

Every single-family dwelling and every dwelling unit in a multifamily dwelling must have an Underwriter's Laboratory (UL) certified and operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes. Effective August 1, 2024, every guest room in a hotel or

lodging house must have an approved and operational carbon monoxide alarm installed in each room lawfully used for sleeping purposes. While the statute does not prohibit the use of battery-operated carbon monoxide alarms, it provides that no person shall remove the batteries from a required alarm, or otherwise render it inoperable in any way. (See **Minn. Stat. 299F.51**).

The owner must install the alarm as indicated and replace any that are removed, stolen, found missing, or rendered inoperable. There is an exemption provided in the statute for the owner of a multifamily dwelling that contains minimal or no sources of carbon monoxide, provided that the owner certifies to the Commissioner of Public Safety that such multifamily dwelling poses no foreseeable carbon monoxide risk to public health and safety of the dwelling units. Combined smoke and carbon monoxide alarms are allowed, if installed according to the manufacturer's directions. There is a discussion going on with building officials and the State Fire Marshal's office about new rules in this area for new construction. Please consult your contractor or architect if you are building new units or extensively renovating existing units.

Boat Carbon Monoxide Detectors: A law passed during the 2016 session and amended in 2017 requires a marine carbon monoxide detector in boats with an enclosed cabin that are operated on public waters or sold in Minnesota. This law also requires three warning labels about the risk of carbon monoxide poisoning to be affixed: one at the helm, one at the entrance to an enclosed space, and one at the stern or point of entry onto the boat. The new law also requires that state sponsored boating safety courses include information about the dangers of carbon monoxide poisoning in boat cabins. Warning labels will also be required for boats with enclosed cabins regarding the risk of carbon monoxide poisoning. The required warning stickers are available from deputy registrars' offices and are mailed to owners of power boats that with a length of 19 ft. or more with the registration information. The requirement applies to gasoline powered craft, but the same precautions are recommended for diesel powered boats and for sailboats with generators or stoves.

Card Games at Business Establishments

In Minnesota, betting is illegal. A bet is defined as "a bargain whereby the parties mutually agree to a gain or loss by one to the other of specified money, property or benefit dependent upon chance, although the chance is accompanied by some element of skill." According to this definition, any card game where the participants pay to play, and have a chance to win money, would constitute a bet and therefore, be illegal gambling. However, the criminal gambling statute creates an exception for "a private, social bet." The important thing to remember about a private social bet is that it cannot be part of "organized, commercialized or systematic gambling." The owner of the location of the social bet cannot derive any profit from the bet, organize regular occasions for such bets or advertise their occurrence. Potentially, any gambling that occurs in a business establishment could constitute illegal gambling because the owner of the establishment derives the indirect benefit of increased patronage.

It appears that the law was intended to exclude from prosecution such events as penny-ante card games among friends in one's home, small spontaneous wagers between friends and other spur-of-the-moment private transactions. Once those wagers occur on a regular basis at a business establishment, it is difficult to characterize them as "social bets" and the location of the event runs a substantial risk of violating the law. Additionally, Minnesota law allows for social skill card games of cribbage, skat, sheephead, bridge, euchre, pinochle, gin, 500 and smear or whist and Texas Hold'em, so long as the tournament or contest does not provide any direct financial benefit to the promoter or organizer.

Players in Texas Hold'em tournaments cannot be charged any fee or be required to give any consideration (something of value) as a condition of participation. In other words, players must be able to participate in a Texas Hold'em tournament for free. Prizes can be awarded in Texas Hold'em tournaments however, as in the case with tournaments involving other social skill games, the value of all prizes awarded in a single tournament cannot exceed $200. With respect to Texas Hold'em, the law further specifies that the value of all prizes awarded to an individual winner of a tournament at a single location may not exceed $200 per day. To participate in a Texas Hold'em tournament or contest, a player must be at least 18 years old.

Minnesota law requires the organizer or promoter of any Texas Hold'em tournament to ensure that reasonable accommodations are made for players with disabilities. In addition to making other accommodations to tournament tables and cards, a tournament organizer or promoter must make sure that Braille cards are available for blind players and that the cards visible to the entire table are announced.

Child Care/Babysitting

If a hotel, resort, campground or other hospitality business provides childcare or babysitting services or makes referrals for childcare to independent babysitters, there is a potential for liability exposure. The risk occurs if a sitter incurs liability for any of a long list of possible problems. A business probably isn't covered for this risk, direct or not, unless they have added a rider or special provision to their business general liability policy. Ask your insurance agent for assistance in covering this potential area of liability.

Chlorofluorocarbons (CFCs)

The Environmental Protection Agency (EPA) has issued regulations banning the release of CFCs (chlorofluorocarbons), which are commonly found in refrigeration and air conditioning equipment. Any hospitality business that hires a firm to work on refrigerators or air conditioners should make sure the firm is reputable, qualified and has the equipment necessary to reclaim or recycle the CFCs.

Release of these into the air can result in a severe fine, and the business can be held partially liable. If a hospitality business has maintenance personnel who work on refrigeration or air conditioning equipment, it will need to purchase the recycling equipment. Anyone who works on air-conditioning and refrigeration equipment must be certified by the EPA. All types of freezers, refrigerators, beer coolers or similar equipment meet the definition of "refrigeration" under these regulations. For more details, contact the Stratospheric Ozone Protection Hotline at (800) 296-1996 or: **spdcomment@epa.gov**.

Clean Indoor Air Act/Freedom to Breathe Law

State: Minnesota was the first in the nation to pass a Clean Indoor Air Act, which restricts smoking in public places. It was passed in 1975 and regulations pertaining to restaurants were first issued in 1980 with frequent updates. In 2007, smoking was banned in all public spaces, including restaurants, bars, taverns, private clubs and VFWs. See **Minn. Rule Chapter 4620**

Restaurants and Bars: Smoking is prohibited in all areas within restaurants and bars. Special "indoor smoking rooms" are not permitted. There are no exceptions to the prohibition.

Lodging Establishments: The ban does not regulate smoking within individual sleeping rooms of lodging establishments rented to one or more guests. Smoking is prohibited in all other indoor areas of lodging establishments including, but not limited to, restaurants, bars, lounges, lobbies, entrances, hallways, laundry rooms, meeting rooms, banquet halls, game rooms, exercise rooms and indoor swimming pool areas.

If smoking is allowed in any guest sleeping room of a lodging facility, a sign stating "Smoking is prohibited, except in designated areas," or a similar statement, must be posted on or immediately inside of each building entrance. In addition, a sign must be posted on the outside of each smoking-permitted guest sleeping room that displays the international smoking-permitted symbol or states, "Smoking Permitted," or both.

If an establishment's policy prohibits smoking within the entirety of the building (including guest sleeping rooms), a sign must be posted at each building entrance that displays the international no-smoking symbol or states: "No Smoking is permitted in this entire establishment" or "No Smoking."

It is the responsibility of proprietors to:

- post "No Smoking" signs;
- ask persons who smoke in prohibited areas to refrain from smoking and to leave if they refuse to do so;

- use lawful methods consistent with handling disorderly persons or trespassers for any person who refuses to comply after being asked to leave;
- refrain from providing ashtrays and other smoking equipment; and
- refuse to serve a noncompliant person.

Outdoor Smoking: The state law allows for outdoor smoking, regardless of distance from building openings such as doors and windows. However, some counties or cities have enacted smoking bans that restrict smoking in outdoor areas, such as patios or near entrances. Check with your local municipality to ensure that you are following the law.

Electronic Cigarettes: E-cigarettes are not prohibited under the Clean Indoor Air Act because they do not involve combustion and do not contain tobacco or other plant product. The Minnesota Department of Health points out in its publications that though this product is legal, there may be health hazards associated with e-cigarettes.

E-cigarette use is prohibited, however, by some schools, universities, and government and healthcare facilities. Minnesota law also requires that e-cigarettes are taxed as tobacco products, and retailers in Minnesota cannot sell e-cigarettes to minors. Additionally, retailers selling e-cigarettes are required to be licensed, are subject to annual compliance checks, and in most cases must keep e-cigarettes behind the counter. E-cigarette sales from kiosks are also prohibited, and e-cigarette liquids must be sold in child-resistant packaging.

Several Minnesota cities and counties prohibit the use of electronic cigarettes in public places, including restaurants and the public areas of hotels. Please check with your local municipality.

Definition of "Indoor Area": "Indoor Area" means all spaces between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes (wall space) constituting the perimeter of the area, whether temporary or permanent. A (standard) window screen is not considered a wall.

Retaliation Prohibited: An employer, manager or other person cannot fire, refuse to hire, penalize, discriminate or retaliate against an employee, applicant, or customer who exercises any right to a smoke-free environment provided under the **Minnesota Clean Indoor Air Act.**

Local Government Ordinances: Local governments retain the authority to adopt and enforce more stringent ordinances.

Smoking in a No-Smoking Hotel Room: If guests smoke in a no-smoking hotel room, innkeepers may send a legal notice to the violators requiring them to pay the cost of the damages plus a $30 service fee and informing them that they could be subject to additional civil penalties if they do not pay damages within 30 days. If the charges are not paid, the innkeeper can seek damages in civil court,

and if successful, have their attorney's fees, not to exceed $500, paid for by the violator. In addition, the bill removes the $100 cap on criminal penalties and allows the violator to be charged for the actual costs to return the room to its previous condition. The posting requirement of this law is met when you display innkeepers' law cards from Hospitality Minnesota. They are available for free download under "Resources" at https://www.hospitalityminnesota.com/resources/

Conceal & Carry Gun Law

A person carrying a firearm under a permit who remains at a private establishment knowing that it has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor.

Reasonable request means: A sign that reads "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES." OR the business or an agent of the business personally informs the person that guns are prohibited on the premises and demands compliance. The sign must be readily visible, and within four feet laterally of the entrance, with the bottom of the sign at a height of four to six feet above the floor. The lettering must be in black Arial typeface at least 1½" in height against a bright contrasting background that is at least 187 square inches in area (11"x17").

An employer may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment-related civil sanctions may be invoked for a violation. The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area by individuals OR employees. A person may not carry a pistol on or about the person's clothes or person in a public place when the person is under the influence of alcohol or drugs. See **Minn. Stat. § 624.714**

Also see the section on Weapons in the Workplace on page 57.

Construction Inspections / Public Assembly Spaces

A law addresses public safety by requiring a state inspection of construction, additions or alterations to buildings that are used as public assembly spaces designed for 200 or more people in areas where there is no local building code inspection. As of July 1, 2017, the Minnesota Department of Labor and Industry (DLI) will review architectural and engineering plans, issue permits and inspect the construction of public assembly spaces designed as sports or entertainment arenas, stadiums, theaters, community or convention halls, special event centers, indoor amusement facilities, water parks, or indoor swimming pools. Plans or an application submitted for local government land-use

approval must also be submitted to DLI for building code review and approval before construction begins on a public assembly space. This change involves additional fees for plan review and inspections.

Counterfeit Currency

A business is at risk for counterfeit currency that it accepts. Although the newly designed notes are much harder to counterfeit than older issues, the crime continues to be committed. What can you do? Provide training to your staff and ask your employees to pay attention to the bills they accept, particularly larger denominations. Training information is available at: **www.uscurrency.gov/**.
Purchase and use a counterfeit detection pen. They are sold at major retailers such as Office Depot, where Hospitality Minnesota members enjoy a discount through our Business Center programs. They cost less than $10 and include instructions. If your point of sale or property management system includes a counterfeit detection feature – use it!

If you suspect that you are being offered a counterfeit bill, you can legally retain it and call the police.

Credit Card Regulations

The federal Fair and Accurate Credit Transaction (FACT) Act provides that persons who accept credit cards and debit cards in point-of-sale transactions must print no more than the last five digits of the card account number and exclude the card expiration date on any electronically printed receipt provided to the cardholder at the point of sale or other transaction.

Credit Card Identification: Minnesota state law does not allow you to require, as a condition of acceptance of a check or as a means of identification, that the person presenting the check provide a credit card number. This does not prohibit you from requesting the person presenting the check to display a credit card, but the only information concerning the credit card which may be recorded is the type and issuer of the credit card and the expiration date. A person may not write down, or request to be written down, the address or telephone number of a credit card holder on a credit card transaction form as a condition of accepting a credit card as payment for consumer credit, goods, or services. (You may, however, record the address or telephone number if the information is necessary for the shipping, delivery, or installation of consumer goods, or special orders of consumer goods or services.)

Plastic Card Security Act: The Plastic Card Security Act covers credit cards, debit cards and stored-value cards that contain private data. The Act states that once a credit card transaction has been verified, retailers cannot store personal information numbers, three- or four-digit security codes,

microprocessor chip data or magnetic stripe data for more than 48 hours. Violators can be sued by financial institutions for such costs as reissuing cards, closing or reopening accounts or making refunds for unauthorized transactions. See **Minn. Stat. 325E.64**

Durbin Amendment Allows Fees and Discounts: The Dodd Frank Financial Service Regulation Act of 2010, called the "Durbin Amendment", included two key provisions on customer fees and discounts:

- Merchants can impose a $10 minimum on credit card transactions (this number can be adjusted by the Federal Reserve System as they see fit).
- Merchants are allowed to give discounts at the register to those who pay with cash or debit cards.

A court settlement arising from a class action lawsuit against Visa and MasterCard struck a provision of the merchant agreement that prohibited surcharges for the use of a payment card. A merchant may charge up to the cost of processing the payment as a surcharge unless prohibited by state law. As of the publication of this guide, Minnesota does not prohibit surcharges. We expect significant consumer objections to surcharges for using a credit card and do not expect this practice to be common. The merchant agreement from Discover and American Express has never prohibited surcharges.

For information regarding Minnesota's new law banning "mandatory service fees" effective January 1, 2025, see the Service Charges / Automatic Gratuities section, page 41.

Least Cost Routing: The Durbin Amendment also capped interchange fees on debit card transactions and required card issuers to allow two (or more) *unaffiliated* networks on each card for every transaction. This additional competition is known as "least cost routing" and is designed to lower cost for operators by allowing them to choose the best network to process each debit transaction. In 2022, Hospitality Minnesota and our federal partners advocated for the Federal Reserve to take further action to issue rules cementing these practices for the network, including on "card-not-present" (CNP) transactions, which have exploded in recent years. In a victory for the industry and other merchants, in 2022, the Federal Reserve issued a Rule (effective July 2023) that will require that every CNP debit card transaction must be able to be processed on at least two unaffiliated payment card networks. We continue to advocate for additional federal legislation to require more competition in credit card processing fees, as well.

Credit Card Form 1099K: If your business accepts payment cards (credit, debit and stored value), your processor should provide you with an IRS form 1099K annually. The form is marked "For information purposes only," but it is important. Most observers expect the IRS to reconcile these forms to business tax returns in the future. Here are some important points to keep in mind and to be sure you communicate to your tax preparer:

- The amounts on the 1099K are the "gross" amount paid to you and include tips paid to your employees and sales taxes. The number may also be affected by credits you give to customers

if they are not processed on a payment card. Don't assume that the amount on a 1099K represents taxable revenue.

- If you process transactions for sales other than your business through your merchant account they will appear on the 1099K and could cause confusion. If you sell services or merchandise as an individual outside your business, you should get a separate merchant account or a PayPal account for those sales. One of our payment card partners described a restaurant owner who also sells antique guns as a hobby and processed those fairly large payments through his business. When the IRS began reconciling 1099K filings with tax returns, mixing other transactions with the business proved to be a real problem.

Payment Card Industry Data Security Standard (PCI): The Payment Card Industry Data Security Standard was developed by the major payment card brands, including Visa, MasterCard, American Express and Discover. Merchants must meet the requirements, known as PCI Data Security Standards (PCI DSS), as a condition of accepting most credit and debit cards. The PCI DSS are designed to make it more difficult for hackers to break into a merchant's computer system and compromise customers' consumer credit and debit card information by providing a framework for merchants to address the security of their business policies, practices and systems. The standards are overseen by the Payment Card Industry Security Standards Council. The standard consists of 12 main requirements plus an evolving list of about 200 components. The latest version of the PCI DSS (version 3.2.1) was released in 2018 and can be accessed here: **https://www.pcisecuritystandards.org/documents/PCI_DSS_v3-2-1.pdf?agreement=true&time=1609712826467**

Some of the key requirements are:

- ***Build and Maintain a Secure Network*:**
  - *Requirement 1*: Install and maintain a firewall configuration to protect cardholder data
  - *Requirement 2*: Do not use vendor-supplied defaults for system passwords and other security parameters
- ***Protect Cardholder Data*:**
  - *Requirement 3*: Protect stored cardholder data
  - *Requirement 4*: Encrypt transmission of cardholder data across open, public networks
- ***Maintain a Vulnerability Management Program*:**
  - *Requirement 5*: Use and regularly update anti-virus software or programs
  - *Requirement 6*: Develop and maintain secure systems and applications
- ***Implement Strong Access Control Measures*:**
  - *Requirement 7*: Restrict access to cardholder data by business need-to-know
  - *Requirement 8*: Assign a unique ID to each person with computer access
  - *Requirement 9*: Restrict physical access to cardholder data
- ***Regularly Monitor and Test Networks*:**
  - *Requirement 10*: Track and monitor all access to network resources and cardholder data

- *Requirement 11*: Regularly test security systems and processes
- ***Maintain an Information Security Policy:***
  - *Requirement 12*: Maintain a policy that addresses information security for all personnel

Payment Card Technology – Shift in Liability: In order to increase the security of credit and debit card transactions, Visa, MasterCard, Discover and American Express have implemented the "EMV" chip card system in the United States. The acronym stands for "Euro Card MasterCard Visa" and it has been used in other countries around the world for some time. Some card issuers support a PIN number and others continue to rely on a signature.

There was a shift in liability for fraudulent transactions from the issuer to the accepting merchant as of October 1, 2015, for non-AFD (automated fuel dispenser) transactions; the liability shift for AFD transactions was extended to April 2021. Merchants that do not have a terminal or POS system capable of reading the new EMV cards will be responsible for chargebacks of fraudulent transactions. The liability shift only applies when an EMV card is presented at the point of sale; otherwise, the current liability for "non card present" transactions remains.

The acceptance of EMV chip and pin cards is not required by the government or the card brands. However, a merchant has additional liability for fraudulent transactions if the new acceptance technology is not in place.

Businesses that accept sales or reservations over the telephone or over the Internet should consider the shift in liability when determining whether to swipe or dip a card at your place of business when the guest picks up their food (in the case of a carry-out restaurant) or checks into their room (in the case of a hotel or resort). Processing the card in person changes the liability from the "card not present" rules to the "card present" rules.

Crib Safety

All cribs manufactured and sold (including resale) must comply with federal safety standards. All hotels, resorts and other public accommodations must use only compliant cribs that meet federal safety standards. The rules, which apply to full-size and non-full-size cribs, prohibit the manufacture or sale of traditional drop-side rail cribs, strengthen crib slats and mattress supports, improve the quality of hardware, and require more rigorous testing. For more information, visit the Consumer Product Safety Commission's website at: **www.cpsc.gov/safety-education/safety-guides/kids-and- babies/cribs**. (Click on the section for Hotels, Motels and the New Federal Crib Standards.)

Cyber Liability Risk Exposure and Insurance

Hospitality businesses may have a risk from the unintended disclosure of customer or employee information, a category of risks referred to as cyber liability. Liability could arise from a breach of a point-of-sale system, a property management system, a credit card processing terminal, a payroll system or other systems. For example, if a manager stores employee personal information including social security numbers on a flash drive or laptop computer that isn't encrypted or otherwise protected, the company could have liability in the event the drive or computer is stolen. If customer credit card information or other personal data is compromised, a business could also have liability.

Cyber liability insurance with security and privacy liability coverage provides protection for third party claims alleging liability resulting from a security and privacy wrongful act. This includes the failure to safeguard electronic or non- electronic confidential information, or the failure to prevent virus attacks, denial of service attacks or the transmission of malicious code from your computer system to the computer system of a third party.

Some information management systems are designed to avoid liability by not storing sensitive data "on-site" in a business system. Many hospitality businesses do have custody and control of customer or employee data and should consider adding cyber liability coverage if it is not included in your business liability package.

Defrauding a Campground Operator

A person shall be guilty of a misdemeanor if they:

- obtain food, lodging, or other accommodations at a recreational camping area without paying for it;
- act with intent to defraud the owner or manager of the recreational camping area;
- obtain credit at a recreational camping area by or through any false pretense; or
- obtain credit by or through the aid, assistance, or influence of any baggage or effects in the possession and control of, but not actually belonging to, the person.

Delivery Charges

Does a charge for delivery belong to the driver or to the company? That depends on how the charge is documented and how it is communicated to customers. This issue was the subject of litigation against a number of large pizza chains. Unless it is clear to a customer that the delivery charge goes to the company, it is presumed under **Minn. Stat. §177.23** subdivision 9 to be a tip for the driver.

If your policy is that the delivery charge goes to the company, the charge should be stated as a "company delivery charge – not a tip to the driver." You may want to have this information on your menu, on signage in your location, on pizza boxes or other delivery packaging, in the explanation provided over the phone when an order is placed, and on your invoices or sales slips. While past litigation involved pizza delivery, the same principle and law would apply to any type of delivery charge or fee including those for catering.

For information regarding Minnesota's new law banning "mandatory service fees" effective January 1, 2025, see the Service Charges / Automatic Gratuities section, page 41.

Dogs in Outdoor Dining Areas

Minnesota statute allows cities to adopt their own ordinances to permit food and beverage service establishments to allow dogs to accompany guests using outdoor service areas such as patios, decks or sidewalk cafes. Such ordinances must not prohibit restaurant owners from banning dogs if they wish to do so. An ordinance must:

- require participating establishments to apply for and receive a permit from the city before allowing a patron's dog on their premises; and
- include such regulations and limitations as the local government deems reasonably necessary to protect the health, safety and general welfare of the public.

Please check with your city to determine if an ordinance has been passed in your community and the requirements for a permit. Some insurance carriers may require a special rider or amendment to cover the potential liability of allowing dogs in an outdoor dining area, so please check with your insurance agent.

Nothing in this Minnesota law changes or limits the requirement under the Americans with Disabilities Act for the accommodation of service animals.

Also see the section on service animals under the Americans with Disabilities Act on page 60.

Drone Use

The use of drones in the U.S. is regulated by the Federal Aviation Administration (FAA) which calls them "unmanned aircraft systems" or UAS. There are guidelines for the use of drones; visit: **www.faa.gov/uas/** for complete and up-to-date information.

There are three categories of drones and several types of users. The categories are:

1. Toys - weigh less than 0.55 pounds and cost less than $100. Not for commercial use.

2. Hobby - weigh over 0.55 pounds and less than 55 pounds and are used for recreation.
3. Professional - weigh over 55 pounds or are used for business purposes.

Key information about the lawful use of drones:

- Toy drones don't require registration.
- Hobby drones must be registered with the FAA prior to use.
- There is a $5 fee to register a hobby drone (weight between 0.55 pounds and 55 pounds).
- Professional drones go through a complex certification and licensing process with the FAA. Commercial use of drones may be permitted by the FAA on a case-by-case basis.

The FAA provides these rules for hobby drones:

- fly below 400 feet and remain clear of surrounding obstacles;
- keep the aircraft within visual line of sight at all times. Use an observer to assist the operator when needed;
- remain well clear of and do not interfere with manned aircraft operations;
- don't fly within 5 miles of an airport unless you contact the airport and control tower before flying;
- don't fly near people or stadiums;
- don't fly an aircraft that weighs more than 55 lbs.; and
- don't be careless or reckless with your unmanned aircraft – you could be fined for endangering people or other aircraft.

Commercial use is defined as revenue generating operations by a business. Examples provided by the FAA include:

- selling photos or videos taken from a drone;
- using a drone on a contract basis for the inspection of industrial equipment, transmission lines, pipelines or other facilities;
- using a drone for hire to provide security or telecommunications; and
- using a drone for film or television production.

A business owner can establish rules for the use of either toy or hobby drones on private property. Some issues that a business owner may want to consider when establishing rules include:

- Where on your property may drones be flown? Are some areas of the resort or campground off limits for drone use to protect guest privacy?
- Are drone operators requested not to take photos or videos that include other guests?
- During what hours may drones be used? Some drones are quite noisy and aren't appropriate for use when most guests are trying to sleep.

Please keep in mind that the FAA guidelines require that the operator or an observer should be able to see the drone at all times. Commercial insurance policies exclude liability coverage for aircraft,

including drones. If you plan to use or allow drones you should add coverage to your insurance policy with a rider. Ask your insurance agent for details.

Eighty-Seven (87) Octane Fuel at Resorts

Resorts, marinas, and houseboat rental companies are able to sell 87-octane gasoline. This gas cannot be sold for use in motor vehicles. State law provides: "A person responsible for the product may offer for sale, sell, or dispense at a resort, marina, or houseboat rental company gasoline that…has an octane rating of 87 or higher; is delivered into on-site bulk storage; and is not used for a licensed motor vehicle."

Fire Codes

There are many fire codes affecting food and lodging businesses. Pursuant to **Minn. Stat. 299F.46** the State Fire Marshal must inspect every hotel with six or more guest rooms at least once every three years. Naturally, effective August 1, 2024, these inspections will also assess an establishment's compliance with respect to carbon monoxide detectors (*see pages 67-68*). For more information regarding the fire codes that affect your business, please contact the State Fire Marshal's Office at (651) 215-0500 or: **https://dps.mn.gov/divisions/sfm/Pages/default.aspx**.

There are fire code information sheets available at: **https://dps.mn.gov/divisions/sfm/fire-code/Pages/fire-code-information-sheets.aspx**; look for the ones with "Hotel and Motel" or "Resort" in the titles.

Firewood Rules

A law passed in 2010 established rules for the sale of firewood in Minnesota:

- **Sale by Package:** All firewood sold or distributed within the state must include information regarding the harvest locations of the wood by county and state on each label or wrapper.
- **Sale from Bulk:** All firewood sold or distributed within the state must include delivery ticket information regarding the harvest locations of the wood by county and state.

Any **firewood with origin of harvest from a quarantined area** must have a federal shield documenting that the wood has been treated to destroy the quarantined pest.

Some resorts and campgrounds now have rules about firewood. The concern has been raised both by the Minnesota Department of Agriculture and the Department of Natural Resources that moving firewood can increase the risk of spreading the emerald ash borer, the gypsy moth and other pests. A

state law now prohibits bringing non-approved firewood into state parks, forests or recreation areas. Some members are posting policies such as this one:

> *Campfire Wood Policy – Due to infestations of the Emerald Ash Borer and Gypsy Moth in other areas, firewood MAY NOT be brought onto the resort property. All firewood brought to or burned anywhere on our property must be purchased from our store or an approved local vendor. Thank you for your understanding and cooperation!*

Fish Packer License

An individual or a business that cleans, packs and labels fish for shipment or transport by others, must have a fish packer license issued by the Minnesota Department of Natural Resources (DNR).

The department has published detailed rules, which can be found at **Minn. Rule 6262.3200** and **Minn. Rule 6262.3250.** This requirement could apply to a resort, campground, guide service, bait shop, outfitter or other business. More information is on the DNR website at: **www.dnr.state.mn.us/fishing/commercial/fishpacker.html**.

Fluorescent Light Bulbs

A ruling by the Federal Environmental Protection Agency has resulted in the reclassification of fluorescent light bulbs as hazardous substances. They must be recycled or disposed of through licensed hazardous waste haulers. For more information on local Minnesota recycling options, storage, shipping and disposal of fluorescent bulbs, contact the Minnesota Pollution Control Agency at (651) 296-6300 or visit: **https://www.pca.state.mn.us/**

Importantly, Minnesota became the latest state to ban the sale of fluorescent light bulbs, effective January 1, 2025. Establishments purchasing fluorescent bulbs before this time will still be able to use them as normal until they burn out.

Food Code – Minnesota

After well over a decade of development, the revised Minnesota Food Code (Minnesota Administrative Rules Chapter 4626) took effect on January 1, 2019. The new language reflects changes in advancements of food science and safety as well as equipment and technology. The new code also brings Minnesota regulations in line with the Food & Drug Administration's Model Code and approved food safety courses like ServSafe. See **Minn. Rule Chapter 4626** and information from the **Minnesota Health Department at Minnesota Food Code (Minnesota Rules Chapter 4626)**

The Food Code is complex and detailed and there is no replacement for thoroughly understanding the official code. A few of the highlights, however, include:

- Certified Food Managers (CFMs) will now be called Certified Food Protection Managers (CFPMs). *Also see the next section on Food Protection Manager Certification.*
- "Critical" and "noncritical" terminology has changed to Priority 1, 2 and 3.
- "Potentially Hazardous Food" is now referred to as Temperature Controlled for Safety (TCS) with cut leafy greens and tomatoes now added to the list of TCS foods.
- In the previous Code, all equipment was required to be certified by the National Sanitation Foundation (NSF). Now, only select equipment must meet certification standards (such as heating/refrigeration equipment, ice machines and slicers), and they can be certified from NSF, UL (S), Edison Testing Laboratories, CE or other recognized testing programs. Less complex equipment such as pans, storage containers and utensils no longer require certification.
- Establishments are now required to inform their customers about the risks of eating raw or undercooked food (previously, it was simply a recommendation).

Information about the new food code from the Minnesota Department of Health can be accessed at: **https://www.health.state.mn.us/communities/environment/food/rules/foodcode/index.html**

The interpretation and enforcement of the food and restaurant codes vary depending on whether you are inspected by the state, county or local municipality. For specific questions, it is best to contact the agency through which you are licensed. For additional information about licensing, visit: **https://www.health.state.mn.us/communities/environment/food/license/index.html**

Additionally, the Minnesota Departments of Health and Agriculture presently envision beginning a rule revision process to Chapter 4626 during 2025 ("Minnesota Food Code Rule Revision 2.0). While there is no timeline yet in place (or any proposed amendments to consider), the Departments intend to confirm Advisory Committee membership, work on identified issues, publish a Request for Comments, and then schedule Advisory Committee meetings to discuss those comments and possible revisions. Establishments should continue to monitor further developments to this process as it is finalized and may submit comments or information on the current Rules or possible amendments electronically until further notice is published in the State Register.

For more information, and for the link to submit questions and comments (click "Public Comment – Food Code Rule Revision 2.0"), please visit: https://www.health.state.mn.us/communities/environment/food/rules/foodcode/2009revision.html.

Food Protection Manager Certification

An owner or operator of a food establishment that is regulated by the Minnesota Department of Health, the Minnesota Department of Agriculture or local authorities that conduct food inspections of food establishments must employ at least one full-time certified food protection manager for each establishment except for a satellite or catered feeding location. The certified manager does not have to be on-site, but someone who does have some food manager experience must be on location.

There are several noteworthy changes to the certified food manager program, effective January 1, 2019:

- Certified Food Manager (CFM) will now be known as Certified Food Protection Manager (CFPM) to better match the title in the FDA Food Code.
- The grace period for recertification has been removed; you must renew your certificate by taking approved continuing education BEFORE it expires. Recertification paperwork and payment must be submitted within six months of expiration.
- You must apply for your initial certificate within six months of passing an accredited program and exam.
- The requirement to have a CFPM is based on your establishment's risk and menu. Food trucks and seasonal establishments are no longer exempt.

Hospitality Minnesota's ServSafe classes meet the MDH requirements for food protection manager certification. To learn more, visit: **https://www.hospitalityminnesota.com/servsafe** and **www.health.state.mn.us**

Fuel Tanks

State law mandates businesses with above ground fuel tanks to register them with the Minnesota Pollution Control Agency (MPCA). Registration forms are available by calling (800) 657-3724. These tanks must also have secondary containment, which could include double-walled tanks, concrete, sealed metal boxes or containers or synthetic or plastic liners in an excavated area with pea rock or other fill material. Learn more at: **www.pca.state.mn.us/sites/default/files/t- a1-02.pdf**.

Underground Storage Tanks: Underground storage tank (UST) owners and operators have been required to complete certification training since 2012. All new underground tanks placed into the ground, as well as any associated piping, fuel dispensers and submersible pump heads must have a secondary containment design, meaning a liquid-tight barrier to capture and detect leaks. Also, for double-walled tanks, operators will need to check monthly for liquids in the interstice between the walls and document the check. Rules require that drop tubes extend to within 12 inches of the tank floor.

Underground Tank Operator Certification: Resorts or other businesses that operate underground tanks for the storage of gasoline or diesel fuel require operator training and certification by the MPCA. This requirement took effect in the seven-county metro area in 2011 and in the balance of the state in 2012. More information about underground storage tanks is available from the petroleum jobber that supplies your business or from the PCA at: **www.pca.state.mn.us/waste/underground-storage-tank-operator-requirements**.

Above ground tanks and tanks for heating oil are not included in the operator certification requirement. Tanks where fuel is used only in vehicles owned by the business may qualify as "unregulated tanks." Your supplier or the MPCA will have additional information.

Gift Cards & Gift Certificates

It is illegal to issue gift cards or gift certificates that include an expiration date or dormancy fees where the card loses value over time. These prohibitions do not apply to gift cards or gift certificates:

- Distributed to a consumer for a loyalty, promotional, award, incentive, rebate or other similar purposes without any money or tangible item of value being given by the consumer in exchange for the gift certificate or gift card;
- Sold below face value or at volume discount to employers or to nonprofit and charitable organizations for fundraising purposes;
- Issued by an employer to an employee in recognition of services performed by the employee;
- Issued by a federally chartered or state-chartered bank, bank trust, savings bank, savings association, or credit union, or by an operating subsidiary or other affiliate of any of them, and that can be used at multiple sellers of goods and services, provided that the issuer discloses any expiration date and fee associated with the gift certificate; or
- Prepaid calling cards used to make wireline or wireless calls.

The law exempts gift cards and gift certificates from the definition of intangible property that would otherwise have to be turned over to the state as abandoned property if unclaimed after three years. Gift certificates and gift cards are not taxable when sold. When a gift certificate or gift card is redeemed, businesses should charge sales tax on any taxable portion of the purchase and apply the amount of the gift certificate or card as a cash payment. For more information, visit: **https://www.revenue.state.mn.us/guide/nontaxable-sales-8**

Handicapped Parking Signage

Accessible parking spaces must be designated and identified by the posting of signs. They must incorporate the international symbol of access in white on blue and indicate that the parking space is reserved for disabled persons with vehicles displaying the required certificate, license plates, or

insignia. The signs must show that violators are subject to a fine of up to $200. A sign posted for this purpose must be visible from inside a vehicle parked in the space, be kept clear of snow or other obstructions which block its visibility and be non-movable or only movable by authorized persons.

Health Department License Fees

The majority of the 87 counties are covered by Minnesota Department of Health (MDH) and the balance have local inspection services. In the Twin Cities, the City of St. Paul plus Dakota, Scott and Carver counties are served by the MDH and other jurisdictions have delegated inspection authority.

For food service establishments, the basis of how licenses are issued moved from a size basis (the number of seats in a restaurant) to a risk basis determined by the cooking and food storage processes used by the establishment. In many cases, the fee charged by MDH went down and in other cases it went up. Fees for lodging, campground and public pools increased by about 10% following about nine years without a fee increase.

A major area where fees are changing is the review of Hazard Analysis and Critical Control Points (HACCP) plans. These plans are required when there is a high risk of foodborne illness. There is a $500 fee for the review and approval of a new HACCP plan. There will also be an annual fee of $175 a year for ongoing review of plans. This new fee applies only (so far) in areas served directly by MDH.

For detailed information, see **Minn. Chapter 157**

Innkeepers' Laws

Abandoned Property: The legal term for the operator of a lodging facility including a hotel or resort is "an innkeeper." The law provides that an innkeeper isn't responsible for the loss of or damages to property that a guest has left behind after checking out. The innkeeper is also not responsible for property sent to the hotel or resort before a relationship between the guest and the facility has been established. **Minn. Stat. 327.71** provides a procedure for storing and eventually disposing of property abandoned for 10 days or longer. It is important that the time periods in the statute be followed.

Innkeepers' Liability for Guests' Personal Property: Except for valuables, no innkeeper shall be liable in an amount exceeding $1,000 for the loss of or damage to ***personal property*** of a guest that is contained in the bedroom registered to the guest. The law's definition of valuables includes money, jewelry, watches, tickets, documents, securities, cameras and other articles of value.

Generally, if you have a safe, you are not liable for a guest's lost valuables unless:

- the guest has offered to deliver the valuables to the innkeeper for custody in the safe or vault; or
- the innkeeper has omitted or refused to take the valuables and deposit them in the safe or vault for custody and to give the guest a receipt for them

If either of these two instances occur, you are liable for the lost or damaged valuables, but only for up to $1,000. If you do not have a fireproof, metal safe or vault, in good order and fit for the custody of valuables, you are still liable for up to $1,000. No innkeeper shall be required to accept valuables for custody in the safe or vault if its value exceeds $1,000 unless the acceptance is in writing. You are not required by law to post the innkeepers' liability provisions, but if you don't, you will be fully liable for a guest's property—regardless of value.

Innkeepers' Rights: Minnesota requires hotels, motels, bed & breakfasts and resorts to rent a room to anyone 18 years of age and older. The law does, however, incorporate many provisions aimed at protecting lodging properties from many of the problems that frequently occur when renting to younger guests.

You may refuse admission or eject ***any*** guest for one or more of the following reasons:

- refuses or is unable to pay for accommodations or service;
- acts in an intoxicated or disorderly manner;
- destroys or threatens to destroy hotel property;
- is reasonably believed to be using the property for the unlawful possession or use of controlled substances, or for the consumption of alcohol by a person under the age of 21;
- is reasonably believed to have brought property into the hotel that may be dangerous to other persons such as firearms or explosives;
- violates federal, state or local laws, ordinances, or rules relating to the hotel; or
- violates a rule of the hotel that is clearly and conspicuously posted at or near the front desk and on the inside of the entrance door of every guest room.

Renting to Underage Guests: In the case of renting to someone under the age of 18 (if your property chooses to do so), an innkeeper may require a parent or guardian of that minor to accept liability for the minor's accommodation, board, room, lodging and any damages to the guest room or its furnishings caused by the minor, and provide a credit card to cover the charges. If the parent or guardian cannot provide a credit card, the innkeeper may require the parent or guardian to make an advance cash deposit to cover the charges for the guest room, plus a cash damage deposit in an amount not exceeding $100 for payment of any additional charges by the minor or any damages to the guest room or its furnishings. The innkeeper shall refund the damage deposit to the extent it is not used to cover any reasonable charges or damages. An innkeeper may also limit the number of persons who may occupy a particular guest room.

Posting Requirements: The law also requires an innkeeper to keep a copy of this law clearly and conspicuously posted at or near the front desk AND on the inside of the entrance door of every guest room. (In the case of cabins with multiple guest rooms, it is our interpretation that the intent of the law allows an innkeeper—primarily resorts—to post these sections on the inside of the main entrance door of a cabin.) Minnesota law does not require that room rates be posted.

Law cards/posters may be downloaded for free from Hospitality Minnesota's website under "Resources" at: **http://bit.ly/HM_InnkeepersRights**

Guest Registration: Every lodging and campground property must require each guest to register their name and home address and those of all persons in their party. If traveling by car or other motor vehicle, they must also provide the make and license number of their vehicle(s). A guest that does not provide this information shall not be provided accommodations.

Registration records must be kept for one year and shall be open to the inspection of all law enforcement officials.

Smoking in a No-Smoking Hotel Room: If guests smoke in a no-smoking hotel room, innkeepers may send a legal notice to the violators requiring them to pay the cost of the damages plus a $30 service fee, and informing them that they could be subject to additional civil penalties if they do not pay damages within 30 days. If the charges are not paid, the innkeeper can seek damages in civil court, and if successful, have their attorney's fees, not to exceed $500, paid for by the violator. In addition, the bill removes the $100 cap on criminal penalties and allows the violator to be charged for the actual costs to return the room to its previous condition. The posting requirement of this law is met when you display innkeepers' law cards from your Association. They are available for free download under "Resources" at: **http://bit.ly/HM_InnkeepersRights**

Overstaying Guests: A guest who intentionally continues to occupy an assigned room in a lodging property beyond the scheduled departure date without the prior written approval of the innkeeper shall be deemed to be a trespasser.

Note*: Innkeepers' law cards are available on Hospitality Minnesota's website *for free and cover on one sheet all of the above-mentioned posting requirements for innkeepers' liability, innkeepers' rights to refuse or eject, and smoking in designated no-smoking rooms.

Defrauding an Innkeeper: A person who obtains food, lodging or other accommodations at any hotel or restaurant without paying for them, with intent to defraud the owner or manager, or who obtains credit for food, lodging, or other accommodations at any hotel or restaurant, with intent to defraud the owner or manager, is guilty of a misdemeanor.

Hotel Guest Privacy: Under Minnesota law, hotel guests have a reasonable expectation to privacy when it comes to their identity information on a hotel registry. In 2020, the Minnesota Supreme Court ruled that law enforcement cannot require a hotel to turn over registry information without at least having a reasonable suspicion of specific criminal activity (or a search warrant). The court's ruling stated specifically that: "...[w]e therefore hold that law enforcement officers must at least have reasonable, articulable suspicion to search the sensitive location information in a guest registry."

Lake Service Provider Training & Permit

Businesses that install or remove water related equipment and structures for hire are required to obtain a Lake Service Provider permit. The process requires an owner or manager to apply for the permit online, attend training provided by the Department of Natural Resources (DNR) and pass a test before a permit can be issued. There is a fee of $50 and the permit is valid for three calendar years. Employees of a Lake Service Provider are also required to take a free online training course and print out their completion certificate. The purpose of the program is to protect the public waters of the state from the introduction or transfer of aquatic invasive species.

There is a long list of "water-related" equipment, but the most common examples are boats and other watercraft, docks, boat lifts and rafts. A resort that only installs equipment that belongs to the resort does not require a permit. Watercraft rental is an example of a service that requires a Lake Service Provider permit. If a business charges for watercraft rental and the business is the one that places watercraft in the water, then the business is considered a lake service provider. More information including a list of training dates and locations and details on required vehicle permits is available on the DNR website at: **www.dnr.state.mn.us/lsp/index.html.**

Liquor Laws

For more specific information regarding liquor laws, contact the Minnesota Alcohol and Gambling Enforcement Division at (651) 201-7500 or visit: **https://dps.mn.gov/divisions/age**.

Brew Pub Sales: State law currently allows brew pubs to sell up to 750 barrels (23,350 gallons) per year at off-sale in growlers. See **Minn. Stat. 340A.24**

Drinking Age: Under **Minn. Stat. 340A.503**, you must be 21 years of age to purchase, attempt to purchase, possess or consume alcoholic beverages (unless the underage person is at home with parents). With respect to purchasing, possessing, consuming, selling, furnishing and serving alcoholic beverages, **a person is not 21 years of age until 8:00 am on the day of that person's 21st birthday**. Service of alcohol to underage persons is considered illegal, as is service to a person who is "obviously intoxicated." Either could result in a criminal penalty and possible revocation of the liquor license. You

may also face a lawsuit under the Minnesota dram shop laws if the underage drinker or intoxicated drinker injures a third party.

Identification for Liquor Sales: Under state law, proof of age can be determined by the following:

- valid driver's license issued by Minnesota, another state or Canada, and including a photo;
- valid Minnesota learner's permit;
- Minnesota identification card;
- valid passport for a foreign national;
- Canadian identification card with a photo; and
- valid military identification card issued by the United States Department of Defense.

If a hospitality business sells alcoholic beverages to a person who is underage based on what appears to be a valid form of identification, Minnesota law says the seller is then given civil and criminal immunity.

Hours and Days of Liquor Sale: No on-sale of intoxicating liquor shall be made between 2 a.m. and 8 a.m. Monday through Saturday after 2 a.m. on Sunday, except a restaurant, club, bowling center or hotel with a seating capacity for at least 30 persons and which holds an on-sale intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 8:00 a.m. on Sundays and 2:00 a.m. on Mondays. An establishment serving intoxicating liquor on Sundays must obtain a Sunday license. The license must be issued by the governing body of the municipality for a period of one year, and the fee may not exceed $200. A city may issue a Sunday intoxicating liquor license only if authorized to do so by the voters of the city voting on the question at a general or special election. A county may issue a Sunday intoxicating liquor license in a town only if authorized to do so by the voters of the town. A county may issue a Sunday intoxicating liquor license in unorganized territory only if authorized to do so by the voters of the election precinct that contains the licensed premises, voting on the question at a general or special election.

The long-standing state law which prohibited liquor stores (off-sale) from being open on Sunday was repealed in 2017 after having been on the books for over 150 years.

Posters Required: A business that is licensed to sell alcohol must post:

- a sign prohibiting the sale or service of alcohol to minors and anyone intoxicated;
- the maximum criminal penalties for driving under the influence;
- a poster warning of the effects of drinking while pregnant;

NOTE: A 3-in-1 poster of these alcohol warnings can be downloaded at: **https://dps.mn.gov/divisions/age/forms-documents/Documents/!Alcohol%20Warning%20Poster.pdf**.

Removal of Wine from a Restaurant: A restaurant with an on-sale or wine license may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal, to remove the bottle when leaving the license premises provided that the bottle has been opened and the contents partially consumed.

Restricted Driver's License (B-Card): The B-Card is a "restricted driver's license" with a no-alcohol/drug restriction. The B-Card provides a repeat DWI offender with an opportunity to become validly relicensed to drive after cancellation for a third or subsequent impaired driving incident. To be eligible, the offender must complete chemical dependency treatment and a rehabilitation period described in law. Any violation of that no-alcohol/drug restriction, irrespective of whether the violation involved driving, carries stiff consequences for the violator, including both administrative sanctions and, if the person was driving, criminal penalties. Thus, with the B-Card, the repeat-DWI offender gets another chance to legally drive, but only if he or she remains permanently chemically free.

There is nothing in the law that prohibits the use of a B-Card as identification for the purchase of alcohol. It is not against the law for a licensee to serve a person with a restricted driver's license, but it is a violation for the individual with the B-Card license to consume alcohol. There is risk of liability or an assertion of liability if a bar or restaurant knowingly serves a person with a restricted license who is later involved in a crash with injuries, fatalities or property damage. The most logical policy is not to serve alcohol to a guest who uses a B-Card for ID. The issue is fairly rare, and the restriction is on the back of the license and not obvious unless a server or bartended turns a license over.

Sunday Sale of Liquor: Subject to individual municipality approval, a restaurant, hotel, or club having the facilities to serve food to 30 guests or more at one time may serve liquor on Sunday in conjunction with the serving of food. The times of serving are 8:00 a.m. to 1:00 a.m., depending on local ordinance.

Sale of Liquor on a Statewide Election Day: There is no prohibition banning the sale of intoxicating liquor on the day of a statewide election. A local ordinance does have the power to prohibit this, however, so it is advisable to check with your municipality first.

Additional Liquor Law Items of Interest: There have been several changes to the state liquor law in recent years, including allowing alcohol service at farm wineries, micro-distilleries and taprooms. Rules regarding growler refills and alcohol tastings were also clarified.

In 2014, Hospitality Minnesota advocated for changes to the state liquor law, including allowing the manufacture and service of infused spirits, allowing the manufacture and service of batched cocktails, increasing the maximum alcohol content of on-sale wine from 14% to 24% and allowing municipalities to issue a wine license to holders of a 3.2 beer license without a 60/40 requirement. Please see the following details on these changes:

Manufacture and Service of Infused Spirits. Infused spirits may now be made and served in an establishment according to the following provisions:

- infused beverages may be stored in containers in a quantity not to exceed five gallons;
- added flavors and other non-beverage ingredients included in the infused beverages shall not include hallucinogenic substances or added pure or supplemental caffeine or other added stimulants, including but not limited to, guarana, ginseng, and taurine; and
- the licensee must keep record as to when the contents in a particular container were mixed as well as the recipe, including brand names, used for that mixture.

Manufacture and Service of Batched Cocktails. Batched cocktails may now be made and served in an establishment according to the following provisions:

- the mixed drinks or cocktails must be stored, for no longer than 72 hours, in a labeled container in a quantity that does not exceed five gallons;
- added flavors and other non-beverage ingredients included in the mixed drinks or cocktails shall not include hallucinogenic substances or added pure or supplemental caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine; and
- the licensee must keep record as to when the contents in a particular container were mixed as well as the recipe, including brand names, used for that mixture.

Alcohol Content of Wine. The sale of wine of up to 24 percent alcohol by volume is now permitted. This is an increased allowance from the previous on-sale restriction of 14 percent.

Elimination of 60/40 Requirement for Certain Licenses. When in accordance with the ordinance of its municipality, the holder of a license to sell beer and wine is not subject to the 60/40 provision.

In 2015, there were two additional changes to the state liquor law. A learner's permit with a photograph and date of birth is now legal identification for the purchase of alcohol. Restaurants with a Sunday on-sale license can now serve alcohol at 8:00 a.m. on Sunday, rather than at 10:00 a.m. under the previous statute. Some cities, however, may restrict Sunday sales to starting at 10:00 a.m. Check with your city before changing your hours of service on Sundays.

In 2022, Hospitality Minnesota was part of a coalition that supported additional changes to state alcohol laws including those that allow:

- resorts to sell beer with alcohol content higher than 3.2%;
- craft distilleries to sell full 750ml bottles of their spirits out of cocktail rooms;
- tap rooms to sell 6-packs and other small-packaged products; and
- large craft breweries to sell growlers

Hospitality Minnesota's 2022 efforts paid off in the 2024 legislative session, when Minnesota's liquor law was amended to provide that municipalities may now issue on-sale malt liquor licenses to resorts,

regardless of conflicting local ordinances. These licenses authorize sales on all days of the week to persons staying at the resort, as well as their guests.

The statutory definition of a "hotel" in Minnesota's liquor law was significantly amended in the 2024 legislative session. Previously, the statute defined a hotel as an establishment regularly furnishing food and lodging to transients which has a (1) a dining room with seating for at least 30 guests at a time **and** (2) a certain minimum number of guest rooms depending on the municipality's classification (at least 50 guest rooms in "first class" cities, at least 25 guest rooms in "second class cities", and at least 10 guest rooms in all other cities and unincorporated areas). Now, these two requirements are independent, and an establishment can qualify as a hotel by featuring a dining room with seating for 30 guests **OR** having the required number of guest rooms depending on city classification. Further, for second class cities, the number of required guest rooms has been reduced from 25 to 15. Therefore, for proprietors in second class cities, an establishment that regularly furnishes food and lodging to transients can qualify as a hotel if it has **either** a dining room with seating for at least 30 guests **or** if it has at least 15 guest rooms.

Local Option Lodging Tax

State law authorizes cities, towns and counties to impose a local sales tax of up to three percent on transient lodging of 30 days or less. The authority was also granted to any combination of cities, towns and counties acting under a joint powers agreement. In addition, the law allows cities to extend the lodging tax on camping site receipts in a municipal campground. Privately owned campgrounds are not included in **Minn. Stat. 469.190**

Currently, about 100 jurisdictions impose a local lodging tax under this authority. A city can impose the tax by ordinance and a town can impose the tax by a vote of the electors at a general or special town meeting. To impose the tax in unorganized territories, the county board must pass a resolution to that effect, put a public notice in the newspaper and hold a public hearing prior to passing a final resolution imposing the tax. If five percent of the voters in the unorganized territories petition for a vote within 30 days of the final resolution, the tax may not be imposed until approved by the voters in the unorganized territories at a general or special election.

In addition, the statute prohibits a local government that has a lodging tax imposed by a special law or charter provision to use the statutory authority to increase the combined lodging tax rate to more than three percent. A provision also allows a jurisdiction to negotiate with the Department of Revenue to collect the lodging tax. The department is allowed to retain from the collected revenues an amount to cover the costs of collection. Most local governments continue to collect the tax locally; the state collects lodging tax only for the cities of Minneapolis, St. Paul, Rochester and Biwabik.

Use of Revenue: The law that authorizes the local option lodging tax requires that 95 percent of all proceeds from a tax must be used to fund a local convention or visitor's bureau for the purpose of "marketing and promoting the area as a tourism or convention area." The remaining five percent may be used for collection or other purposes. Even though the law is quite specific, questions have arisen regarding the term "marketing and promoting." An Attorney General's opinion narrowed the definition by stating that the dedicated portion (the 95 percent) may NOT be used for capital expenditures (*e.g.*, buildings, civic centers, performing arts centers, roads, other city improvements or otherwise to promote tourism). Subsequent opinions from the Attorney General have stated that ***the tax may NOT be used to:***

- pay for holiday decorations in a downtown area;
- pay for fireworks to celebrate Independence Day;
- paint a local picnic shelter;
- purchase band uniforms;
- build or improve a local trail; or
- place banners on Main Street.

The Attorney General has been consistent that the definition of "marketing and promoting" should be narrowly limited to activities that help bring business from outside of the community to put "heads in beds." The official language on local lodging taxes may be found at **Minn. Stat. 469.190**

For more information on the local option lodging tax see:
https://www.house.leg.state.mn.us/hrd/pubs/lodgetax.pdf

Local Sales and Use Tax

There are many cities and counties in Minnesota that now have local sales and use taxes. Some are called transit sales and use taxes but that doesn't change how they are collected or remitted. The Minnesota Department of Revenue has a sales tax "lookup" tool online at: **https://www.revenue.state.mn.us/sales-tax-rate-calculator** but this doesn't always include special local taxes.

There is also a Fact Sheet on local taxes available: **https://www.revenue.state.mn.us/sales-tax-fact-sheets-and-industry-guides**. Further information is available at: **https://www.revenue.state.mn.us/local-sales-tax-information.** Your city or county is also a good source of current information about local tax rates.

Local sales tax applies to retail sales made and taxable service provided within the local taxing area and is applied to the same items that are taxed by the Minnesota Sales and Use Tax laws (see **Minn. Chapter 297A**).

The 2019 tax bill signed in special session by the Governor included new requirements for local governments seeking to add local sales taxes. The Minnesota House Research Department describes these changes as follows:

> "Requires a local government to pass a more detailed resolution outlining and limiting the specific projects to be funded to no more than five and providing more project specific costs, and documentation of a project's regional significance by the end of January in the year in which a local sales tax authority is sought. Also requires that voter approval be sought only after the authority is granted and requires the voters to approve each project to be funded in a separate question in a general election. Only projects that are approved by the voters may be funded with the tax, and the tax authority will be adjusted down to reflect any project referendum that fails. Also eliminated the provision allowing a local government to impose a separate tax on motor vehicles." See House Research: **https://www.house.leg.state.mn.us/hrd/pubs/localsal.pdf**, page 24.

To read more of the Minnesota House Research publication *Local Sales Taxes in Minnesota*, visit: **https://www.house.leg.state.mn.us/hrd/pubs/localsal.pdf** Also see the Sales Tax section on pages 110-111 for other sales tax information.

Marina Property Tax

The class 4c (seasonal recreational) tax category applies to marinas that provide access to the public. The amount of land that can qualify for the classification is limited to 800 feet of shoreline and up to six acres. Commercial buildings on the property continue to be classified as class 3a commercial. Class 4c property has a class rate of one percent on the first $500,000 of market value and 1.25 percent on the value in excess of $500,000 and is subject to the seasonal-recreational state tax rate.

See **Minn. Stat. 273.13**

Medical Lodging

A special category of lodging is defined in order to have medical lodging for patients and their families subject to licensure, inspection and the collection of sales and lodging taxes. The definition provides that medical lodging is:

A building or structure located within 10 miles of a hospital or medical center and maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished exclusively to patients, their families, and caregivers while the patient is receiving or waiting to receive health care

treatments or procedures for periods of one week or more, and where no supportive services, or health supervision services, or home care services are provided.

Menu Labeling

The Affordable Care Act includes menu labelling requirements that affects restaurants and similar retail food establishments that are part of a chain with 20 more locations, that are doing business under the same name, that offer for sale substantially the same menu items, and that offer for sale "restaurant type foods."

Under the final rules adopted by the U.S. Food and Drug Administration (FDA), affected businesses must:

- disclose calorie information on menus and menu boards for standard menu items;
- disclose calorie information on signs adjacent to foods on display and self-service foods that are standard menu items;
- post a succinct statement concerning suggested daily caloric intake, such as "2,000 calories a day is used for general nutrition advice, but calorie needs vary." Also required is the statement "Additional nutrition information available upon request";
- provide written nutrition information for standard menu items upon consumer request; and
- post on menus and menu boards statement that written nutrition information is available upon request.

If an alcoholic beverage is a standard item listed on a menu or menu board, then you are required to include calories; there are exceptions for temporary or seasonal items (appearing fewer than 60 calendar days per year). Menu labeling rules are complex, detailed and lengthy. For complete details, visit the FDA website for complete menu labeling requirements at: **https://www.fda.gov/food/food-labeling-nutrition/menu-labeling-requirements**

Menu Labeling Disclaimer: There is a concern in the industry, triggered in part by the controversy over "foot long" sandwiches measuring less than 12 inches and other situations that there may be lawsuits over nutrition labeling if actual menu items deviate from the published nutrition information. Some operators are attempting to protect themselves by including disclaimer language such as this on their menus and websites:

> *Sample Disclaimer: The nutrition information we provide is calculated based on our standardized recipes and has been rounded for consistency with FDA labeling regulations. Our menu items are handcrafted and may be customized at your request. Variations in serving sizes, preparation techniques, ingredient substitutions, product testing and sources of supply, as well as regional and seasonal differences may affect the nutritional values for each product.*

If you add nutritional information to your menu, you may want to consider including a disclaimer about how the information was calculated and the likelihood that actual servings will vary slightly from the published information.

Minnow Retailer & Dealer Licenses

The Minnesota Department of Natural Resources (DNR) requires a license for individuals or businesses that sell minnows or leeches. A minnow dealer license allows for the taking, possessing, buying and selling of minnows from public waters that can be legally accessed. Leeches are considered and defined as minnows. A minnow dealer can sell minnows at one retail outlet under their minnow dealer license but must obtain a minnow retailer license for each additional retail outlet where minnows are sold at retail. The cost of a minnow dealer license is $310 per year.

A minnow retailer license allows for the retail sale of minnows (including leeches) as bait at one business location. A resort, campground, outfitter or other business that purchases minnows or leeches from others for resale requires a minnow retailer license. A minnow retailer license is $47 per location per year.

Resort or campground operators who are transporting minnows from a licensed wholesaler to their place of business no longer need a special vehicle permit from the DNR. There is a requirement that the operator have an invoice or other paperwork from the bait wholesaler in their possession.

Additional information on either the minnow dealer or retailer license is available on the DNR website at: **www.dnr.state.mn.us/fishing/commercial/minnowretailer.html**.

Music Copyright Law (ASCAP/BMI/SESAC)

If you use music in your establishment, it's most likely copyrighted music and according to U.S. Copyright Law, you must obtain permission for its use. Most operators do this by reaching agreements with one, two, or all three major licensing organizations in the United States—the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music International (BMI), and SESAC. ASCAP and BMI are by far the largest, licensing nearly all the world's copyrighted musical works. A license with one does not cover the artists that are represented by the other, so both or all three licenses may be necessary. For more information on music licensing, visit: **www.bmi.com/licensing/**, **www.ascap.com/ licensing/** or **www.sesac.com**.

Exemptions: There is a "homestyle" exemption for radio and television music for smaller businesses and retailers. Businesses that are 3,750 square feet or smaller are exempted from paying royalty fees

for playing radio and television music; and retailers are exempted if they are less than 2,000 square feet. Larger businesses and retailers may also be exempt if they have four or fewer televisions (no more than one per room or larger than 55" diagonally) and six speakers, no more than four per room. To obtain this exemption, businesses may play a radio with no more than six total speakers and with no more than four per room.

ASCAP, BMI and SESAC are limited from attempting to collect rates that are higher than those set forth in their contracts. Licensing officials must also identify themselves immediately upon entering an establishment and must provide a schedule of rates and a list of the songs they represent.

Recorded Music: This includes electronic files, CDs, cassettes, records, televisions and any other form of recorded music. A restaurant owner, for example, who wishes to play tapes of favorite performers through a sound system in the establishment, must obtain licensing to play the music, as this is deemed a "performance" of the music. Storecasting, a term that describes the common practice of playing a radio station over speakers in a hospitality business for the enjoyment of customers and employees, is also considered a "performance" and license fees must be paid. In addition, television shows often play licensed music as background or as part of programs. Thus, televisions can require a hospitality business to pay licensing fees as well. (See exemptions above.) Even businesses that play copyrighted music on their telephones (*i.e.*, a radio station while on hold), must also obtain permission and pay a fee for the right to play that music as part of their business. This is typically included in the fee paid to the service provider but be sure to check to make sure it is included.

Live Music: Essentially, all of the liability to ensure that live music that is performed is licensed rests with the establishment's owner, even if the band or musicians are independent contractors, and even if the property is leased, when the owner has a good idea that music will be played. Generally, license fees for both live and recorded music are based on factors such as room capacity, the type of "performance" (live or recorded), and the establishment's entertainment costs.

Most members of Hospitality Minnesota are eligible for discounted fees from BMI; all members are eligible for discounts from Soundtrack Your Brand, a music streaming provider that includes licensing fees.

Notification of Proposed City Ordinances

State law requires cities which have email notifications available to residents to make those notices available to businesses which sign up to receive them. Cities are required to provide 10 days' notice prior to a final vote on any new ordinance or ordinance amendment that will impact businesses in the city. The proposal was a response to city ordinance that had received very little input prior to being adopted in recent years. A similar requirement already applies to county governments.

AWAIR—A Workplace Accident Injury Reduction Program: The AWAIR program requires all food and lodging properties to have a written workplace safety and health program that covers five areas:

1. how managers, supervisors, and employees are responsible for implementing the program and how continued participation of management will be established, measured and maintained;
2. the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
3. how the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls;
4. how workplace accidents will be investigated, and corrective action implemented; and
5. how safe work practices and rules will be enforced.

An employer must conduct and document a review of the workplace accident and injury reduction program at least annually and document how procedures set forth in the program are met. More information is available from the Minnesota Department of Labor and Industry at" **www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compli-ance-awair-program**. An Employer's Guide to Developing an AWAIR Program can be accessed at: **www.dli.mn.gov/sites/ default/files/pdf/awair.pdf**.

Bloodborne Pathogens: OSHA has expanded to lodging properties a rule intended to limit the workplace exposure of employees to AIDS, hepatitis B and other bloodborne pathogens. The rule, known as the Bloodborne Pathogen Standard, requires that lodging businesses assess the "occupational exposure" of their employees to bloodborne pathogens, which are micro-organisms in the human blood. "Occupational exposure" is defined as "reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties." One example would be housekeeping employees who might come into contact with needles in emptying garbage cans.

If risk of exposure exists, the employer must design a plan to prevent bloodborne pathogen infection, employers must:

- have a written exposure control plan;
- implement protective practices designed to decrease the likelihood of exposure (such as wearing gloves);
- provide the hepatitis B vaccine. If the risk of exposure is significant, OSHA generally seeks to have this vaccine offered prior to any exposure occurring;
- provide post-exposure follow-up. Data on any incident in which an employee may have been exposed must be kept for 30 years;
- provide training; and

- maintain records. Training records must be kept for three years.

Confined Spaces: OSHA has standards regarding working in confined spaces, which can include boilers, ducts, bins, tubes, pits, tanks or vats that may present atmospheric hazards, entry/exit access problems for someone who became suddenly disabled or an engulfment condition in which a finely divided particle or liquid could surround a person. In these cases, employers must do the following:

- identify all confined spaces in the workplace;
- prevent unauthorized entry into those spaces;
- provide training to those who must enter those spaces and to those who might have to perform rescue operations;
- assure that emergency rescue services are available before employees are allowed to enter; and
- additional steps must be taken for higher risk spaces. Check with OSHA regarding confined space situations to verify.

OSHA Compliance website: **https://www.dli.mn.gov/about-department/our-areas-service/minnesota-osha-compliance**

Material Safety Data Sheets (MSDS): The material safety data sheet (MSDS) is a detailed information bulletin prepared by the manufacturer or importer of a chemical that describes the physical and chemical properties, health hazards, routes of entry, precautions for safe handling and use, emergency and first-aid procedures and control measures. This information is not only helpful when selecting appropriate products but provides employers and employees with the facts they need to use, store or dispose of the substance safely and to respond to an emergency. Employers must maintain a complete and accurate MSDS for each hazardous substance used in their facility and are entitled to obtain this information automatically upon purchase of the material.

Employee Right to Know: The Employee Right-to-Know (ERTK) Act is intended to ensure employees are aware of the dangers associated with hazardous substances, harmful physical agents or infectious agents they may be exposed to in their workplaces. The Act applies to all employers in Minnesota, with the exception of federal agencies. To comply with the ERTK standard, employers must identify the hazardous substances, harmful physical agents and infectious agents that are present in the workplace and provide information and training to employees who are "routinely exposed" to those substances or agents. A written ERTK program is required. See **Minn. Rule Chapter 5206**

"Routinely exposed" means that a reasonable potential exists for exposure to hazardous substances, harmful physical agents or infectious agents during the normal course of the employees' work assignments. Exposure above the Minnesota OSHA permissible exposure limits is not necessary before implementing ERTK provisions. "Routinely exposed" includes working in areas where hazardous substances have been spilled and assignment to cleaning up leaks and spills. It does not include a

simple walk-through of an area where a substance or agent is present, and no significant exposure occurs. In brief, the Employee Right-to-Know program must include:

- an inventory of hazardous substances and/or agents that exist in the workplace;
- identification of employees who are routinely exposed to those substances or agents;
- a system for obtaining and maintaining written information on the substances and agents employees may be exposed to in the workplace;
- methods for making ERTK information readily accessible to employees in their work areas;
- a plan for providing initial, pre-assignment and annual training of employees; and
- implementation and maintenance of a labeling system or other warning methods.

Safety Committees/Safety Surveys: State rule requires that any employer with more than 25 employees must establish and administer a joint labor-management safety and health committee. If the size of the employer's workforce fluctuates, the committee is to be in place during the periods when more than 25 employees are employed. If the employer operates in more than one location, the employer needs to establish one safety committee and need only establish additional committees at those sites at which 50 or more employees work. High-risk smaller companies must also establish such a committee. Safety committees established under the above-mentioned AWAIR program are deemed in compliance with this rule. In addition, the rule requires that high-risk employers must conduct workplace safety and health surveys at each workplace at least quarterly. Consult with OSHA to determine if your business is high risk.

For additional information, you may contact the federal Office of Safety and Health Administration (OSHA) at (800) 321- OSHA (6742) or visit: **www.osha.gov** or the Minnesota office at (800) DIAL-DLI (342-5354) or **www.dli.mn.gov/business/workplace-safety- and-health/mnosha-compliance-standards-and-regulations.**

Packaging: Environmental Ordinances

Minneapolis, St. Louis Park and St. Paul have each passed their own specific packaging ordinances. The packaging ordinances require businesses that serve ready-to-eat food (including restaurants, convenience stores, concession stands and food trucks) to use only environmentally acceptable packaging.

The new local laws require that containers for ready-to-eat food must be reusable, recyclable or compostable. Recyclable materials are limited to plastics that have a market in Minnesota including:

- Type 1 - PETE
- Type 2 - HDPE
- Type 5 - Polypropylene
- Compostable packaging includes paper or plastic marked 7 PLA or BPI. Not all plastics marked 7 are compostable.

Business owners may be able to apply to their city for additional exemptions on a case-by-case basis. Restaurants are also required to have separate disposal containers for recyclable and compostable materials available to guests. There are grant programs available from the City of Minneapolis and from Hennepin County to assist businesses with the cost of purchasing required disposal containers. Enforcement of the ordinance will be through regular health department inspections.

Minneapolis Green To-Go Ordinance: There are several exceptions to the Minneapolis requirements:

- utensils and cutlery are specifically exempt;
- food items prepackaged for "grab and go" sales by a vendor or commissary;
- ready-to-eat foods packaged by a vendor or producer;
- straws and stir sticks are not considered packaging; and
- containers used by catering companies including rigid polystyrene are exempt.

Events and Markets: Event food sponsors and market managers are responsible for the collection and handling of to-go food and drink containers at their event or market. Event food sponsors and market managers must:

- provide recycling collection bins for recyclable food and drink containers;
- provide organics collection bins if any vendor uses compostable plastic food containers; and
- have systems in place to send materials collected for recycling or composting.

For additional information on Minneapolis' Green-To-Go ordinance, including information about business recycling grants in Hennepin County, visit: **https://www2.minneapolismn.gov/business-services/business-assistance/run/food-business-rules/green-to-go/**

St. Louis Park Zero Waste Ordinance: There have been several exceptions to the St. Louis Park requirements, but they expired in 2022. For 2024, St. Louis Park has identified paper food wrappers and liners (e.g., fast food wrappers) as temporarily exempt from the ordinance. Any food establishment that chooses to utilize temporarily exempt items MUST provide information to customers to clearly indicate these items can't be recycled or composed and must be placed in the garbage. This information must be provided in print in one of the following ways:

- directly labeling exempt items;
- including text on menus; and
- posting signage where it is visible to customers.

In 2020, the city council added the following requirements:

- all food establishments are required to use compostable utensils when they are not using reusable materials;
- food establishments are prohibited from giving straws to customers, unless requested. They can, however, maintain a front-of-the house straw dispenser; and

- food establishments are required to ensure compostable cups and containers are properly labelled, that lids used for compostable containers are compostable, and that lids used for recyclable products are recyclable.

For more information: **https://www.stlouispark.org/business/zero-waste-packaging-ordinance**

St. Paul Sustainable-To-Go Ordinance: St. Paul's ordinance went into effect on January 1, 2022. The city now allows operators to apply for exemptions for certain packaging materials if alternatives are not available or if the switch is cost prohibitive. To request an exemption, operators must provide to the Department of Safety and Inspections:

- details about the food or beverage being packaged;
- cost information on the packaging being used that does *not* meet the city's rules; and
- cost information on packaging that *would* meet the city's rules.

To review the ordinance and its specific legal definitions, please visit:
https://stpaul.legistar.com/LegislationDetail.aspx?ID=3101327&GUID=00F9AA27-C1E6-4F20-84F2-100692CCE152&Options=&Search=&FullText=1

Also see the section on Recycling Mandate for Businesses in the Twin Cities on page 108 and the section on Recycling - Hennepin County on page 109.

Pay-Per-View Sporting Events

Some sporting events, such as professional boxing, ultimate fighting and professional wrestling are available through cable and satellite television providers on a pay-per-view basis. The charge for a homeowner to license a program is much lower than the cost to a restaurant or bar to show an event in its place of business. In 2012, there was publicity about lawsuits filed against businesses that were accused of "pirating" sporting event coverage by misrepresenting their bar or restaurant as a private residence or redirecting access from a residence to their place of business. According to a newspaper article, judgments ranging from $5,000 to over $140,000 were entered against Minnesota bar and restaurant owners in these cases. Talk to your cable or satellite provider about the availability and the fees for showing pay-per-view sporting events. This does not apply to regularly scheduled programming that is not sold on a pay-per-view basis.

Per Diem Rates

The General Service Administration (GSA) establishes the continental United States (CONUS) per diem rates providing the maximum reimbursement allowances up to which federal employees are

reimbursed by their agencies for expenses incurred while on official travel. The CONUS per diem rate for an area is actually three allowances in one: the lodging allowance, the meals allowance, and the incidental expense allowance.

Most of the CONUS (about 2,600 counties) are covered by the standard CONUS lodging per diem rate, which is $110 with a Meals and Incidental Expense rate of $68 for Fiscal Year 2025.

In 2025 the Non-Standard areas (NSA) in Minnesota that have per diem rates higher than the Standard CONUS are as follows:

County	Key Cities Included	Maximum Lodging Rate (Excludes Taxes)	Maximum Meals & Incidentals Rate
All counties without specified rates	All locations without specified rates	$110	$68
Hennepin & Ramsey	Minneapolis, St. Paul	$148	$92
Olmsted	Rochester	$127	$80
St. Louis	Duluth	$220	$86

Note: If neither the city nor the county is listed, the location is a standard CONUS destination with a rate of $110 for lodging and $68 for meals and incidental expenses (M&IE) for a combined total per diem of $178.

GSA rates are based on the Average Daily Rate (ADR). This data is obtained through a GSA contract with a leading provider of lodging industry economic data. The ADR is a widely accepted lodging industry measure based upon a property's room rental revenue divided by the number of rooms rented as reported by the hotel property to the contractor. This calculation provides us with the average rate that rooms rent for in a given area. For rate setting, GSA is required by law to use only properties that are approved by the Federal Emergency Management Agency (FEMA) as being fire safe and in compliance with the Hotel Motel Fire Safety Act of 1990. More information about per diems can be found at: **https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup**.

Public Waters/Wetland Work Permits

Projects that impact Minnesota's water resources are regulated by a variety of federal, state and local agencies. In many cases, a permit is required from one or more of these agencies before proceeding with a project. Water resources include "public waters," "public wetlands," "wetlands" and ground water. A "public water" is a lake or pond of more than 2.5 acres in a city and more than 10 acres outside of cities.

Examples of activities that may require a permit include installation, construction or operation of an aeration system; mechanical or chemical aquatic plant management; rough fish removal; fish stocking; beaver dam alteration or removal; construction beyond the ordinary high-water level of any type in lakes or wetlands; and the diversion or alteration of the flow of a creek or river. Most activities including construction or drainage in a public wetland are either prohibited or require one or more permits.

More information is available on the Department of Natural Resources website at: **https://www.dnr.state.mn.us/permits/water/index.html**. Because a permit may be required from more than one unit of government, the DNR provides a list of county-by-county contacts at: **www.dnr.state.mn.us/permits/water/water_permit_contacts.html**.

Plumbing Licenses

Plumber license required statewide: Since 2007, all people working in the business of plumbing must be licensed plumbers or registered apprentices. The one exception is those people who install sewer or water service pipes outside buildings who are certified with pipe laying training and have a $25,000 plumbing code compliance bond filed with the Department of Labor and Industry.

Restricted license: People with restricted licenses may perform plumbing in the state except in cities with a population of more than 5,000. No new applications have been allowed since 2009, but those to whom a restricted license was issued have "grandfathered" status and can continue to renew the license.

New rules created by the Board of Plumbing created a requirement that all licensed plumbers, including those with restricted licenses, take continuing education (CE) to renew their licenses. More information about continuing education is available on the Department of Labor and Industry website at: **www.dli.mn.gov/business/plumbing-contractors/ continuing-education-requirements-plumbers**.

Plumbing work and plan review: Owners of public, commercial and licensed facilities will no longer be able to do plumbing in their facilities in areas of less than 5,000 population unless licensed to

perform plumbing. A licensed engineer or the licensed plumber who will do the installation must prepare plans for installation of plumbing in these facilities. This is the same as currently required in cities of 5,000 or more.

Posters – Public

Every hotel, motel, resort, B&B, campground, restaurant, lodging house, boarding house or place of refreshment shall keep their operating license in a conspicuous place in the office of such place. In addition, the state requires you to post other notices: **If you serve food:** First Aid for Choking poster - download at: **https://www.printablee.com/postpic/2010/06/printable-first-aid-choking-sign_211202.jpeg**

If your business is licensed for the retail sales of beverage alcohol: Alcohol Warning Poster (refusal to serve minors, penalties of drinking and driving, drinking and pregnancy) download at: **Alcohol Warning Poster.pdf (mn.gov)**

Service animals: Following passage of a 2018 law making it a crime to misrepresent an animal as a service animal, Hospitality Minnesota created a poster that businesses ***may*** (but are not required to) post that welcomes service animals and educates the public about the penalties for misrepresenting a service animal. Members may download the poster for free on Hospitality Minnesota's website under "Resources." An employee training handout on service animals is also available for free download there.

See page 37 for Posters - Employment Related.

Post-Labor Day School Start

Except for learning programs during summer or flexible learning programs authorized under state law, a school district must not commence an elementary or secondary school year before Labor Day. School districts may begin prior to Labor Day ***only*** to accommodate construction or remodeling projects of $400,000 or more in a district.

Promotional Contests & Raffles

According to the Attorney General, any contest requiring a person to make a purchase to enter a contest violates Minnesota gambling laws because it falls under the definition of "lottery." Businesses conducting such contests must allow anyone to register. A person winning a prize must be given the prize or a prize voucher within 30 days of being notified.

Raffles are defined as a game in which a participant buys a ticket or other certificate of participation in an event where the prize determination is based on a method of random selection and all entries have an equal chance of selection. Most raffles require the purchase of a permit and have specific requirements and restrictions. For more information, visit the Minnesota Gambling Control Board's website at: **https://mn.gov/gcb/games/raffles.jsp**

Property Taxes

Automatic Inflation: Automatic inflation has been removed from the statewide property tax levy and as of 2022, and due to a law change supported by Hospitality Minnesota, the first $150,000 of assessed value for commercially classified property is now exempt from the statewide levy. The change does not apply to the 1c and 4c resort classifications but will assist members with property that is classified as 3a commercial. During the 2019 session, the statewide property tax levy was reduced for commercial property and seasonal recreational property, a policy change supported by Hospitality Minnesota.

Property Tax Classification: The property tax law was amended to help resorts and campgrounds. After a six-year effort, Hospitality Minnesota supported legislation that now permits resorts or campgrounds on a state trail to qualify for the 1c (mom and pop resort) property tax classification in addition to those located on a lake or river. As of 2018, resorts or campgrounds on land that is leased from the U.S. Forest Service or another government entity pay property taxes only on their buildings and improvements.

See **Minn. Stat. 273.13**

Resort Cabin Rentals and Short-Term Vacation Units: Beginning in 2021, individually or fractionally owned resort cabins/units and short-term vacation rental units are classified as 4b for property tax purposes. This should *not* impact portions of a resort property that continue to qualify as 1c or 4c property (owned by the resort company).

Until recently, each of the 87 counties in Minnesota classified short-term vacation rentals differently, creating a patchwork of uneven standards around our state. In 2019--in an effort to create a uniform standard--the Department of Revenue re-classified all short-term vacation rental property (including certain cabins at resorts) in Minnesota as 3a commercial. This policy shift had the unintended consequence of *significantly* increasing the property tax burden on certain resort cabins (some projections indicated that property tax bills could nearly be tripled). In recent years, the number of resorts utilizing individual and/or fractional ownership of individual units/cabins has increased significantly, as resorts have adapted to market conditions to survive.

The prospect of significantly increasing property taxes on certain resort cabins and short-term vacation rental units created concerns that tourism could be suppressed, harming economic activity. In order to address this issue, the Legislature passed a bill during a 2020 special session that reclassifies these units as 4b. So, while these properties may see a one-year spike in property tax payments (at 3a rate), this should only be a one-year occurrence. Given that the 4B status qualifies them for local levies, projections are that these properties are likely to see a *modest* increase in property taxes if they had previously been classified as 4(c)(12) seasonal, for example.

Record Retention

There are various records that you need to keep for different periods of time, including condo association rules when applicable. *See pages 118-119 for more information.*

Department of Labor: The state and federal Departments of Labor require that records pertaining to employees be kept by the employer for a period of three years after termination of each employee.

Also see the section on Employee Records on page 19.

IRS: The Internal Revenue Service (IRS) requires that records relevant to the calculation and collection of federal taxes be kept. Records for employees' tax withholding should be kept for at least four years. Records for the business (such as canceled checks, credit card and other receipts, customer checks and other records used to support income) should be kept for at least three years, but after assessment, the IRS has six years to begin collection, and the taxpayer has three more years after that to claim a refund after filing a return. Thus, it may be wise to keep these records for up to 11 years. The IRS allows various methods of record keeping including microfilm, accountants' worksheets and computer systems.

EEOC: The Equal Employment Opportunity Commission (EEOC) requires that employers keep personnel and employment records for one year. These records include but are not limited to job applications and other records of hiring, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation and selection for training.

Guest Registrations: Minnesota state law requires that guest registration records for lodging and campground properties be kept for one year and shall be open to the inspection of all law enforcement officials.

Also see the section on Guest Registration under Innkeepers' Laws on page 87.

Other: Record retention is complex and varied. Contact your accountant for more details.

Recycling Mandate for Businesses in the Twin Cities Area

Under State law, there is a specific recycling mandate for the Twin Cities area that:

- applies in the seven-county metropolitan area (Hennepin, Ramsey, Anoka, Dakota, Scott, Carver and Washington counties);
- applies to the owners of commercial buildings that contract for the collection of four cubic yards or more of solid waste per week (The law is silent on whether the volume requirement applies to compacted or un-compacted volume.); and
- requires that three or more categories of recyclable materials be collected from a list, including, but not limited to paper, glass, plastic and metal. A single–sort program that includes three or more types of materials qualifies.

The Minnesota Pollution Control Agency has information at:

- **https://www.pca.state.mn.us/sites/default/files/w-sw10-02.pdf**
- **https://www.pca.state.mn.us/waste/recycling-your-business**
- **https://www.pca.state.mn.us/business-with-us/recycling-metro-area-commercial-buildings** (for commercial businesses)

Also see the next section for new requirements for recycling in Hennepin and Dakota Counties

Recycling – Hennepin County

Hennepin County's recycling ordinance requires businesses that generate large quantities of food waste to implement food waste recycling. This affects restaurants, hotels, caterers, grocers, residential care facilities, office buildings with dining services, and other "commercial generators." This requirement applies to businesses in the covered sectors that generate one ton of trash or more per week or contract for weekly collection of eight or more cubic yards of trash. In addition to requiring organics recycling, the ordinance was revised to improve conventional recycling at businesses, apartments, and other multifamily dwellings. These businesses must also create a program to divert food and food scraps from the back-of-the-house to a beneficial. Beneficial use includes:

- Donating food for human consumption; and
- Collection of food, food scraps (and where relevant other compostable material) for
    - Food-to-animal programs (either food-to-livestock or food-to-animal-feed processing).
    - Composting at a commercial composting facility.
    - Anaerobic digestion at an anaerobic digestion facility.

Additional information is available at: **https://www.hennepin.us/businessrecycling**

Also see the previous section for business recycling in the Twin Cities.

Recycling – Dakota County

Dakota County has passed an additional ordinance related to recycling and food waste. Currently, property owners or managers of commercial buildings and properties are required to provide recycling service, locate recycling containers with trash, label containers, provide standardized training to employees and custodial staff and report to the county the effectiveness of the program (the county will reach out directly to businesses). In addition, the county has passed requirements regarding the collection of organics/scrap food which went into effect for hospitality businesses such as restaurants, hotels, golf courses, etc. in 2024. Such establishments that contract to collect at least eight cubic yards (one ton) of trash per week and generate food scraps from their back-of-house operations (*i.e.*, pre-consumption food waste from kitchen prep areas, dishwashing and storage areas, but not food that has been served to the public) must have organics collection in place.

Dakota county operators can ensure their compliance with 2024 change using the resources available on the county's website at: **Recycling Requirements for Businesses| Dakota County**

Restaurants on Lake Property

Property tax breaks are available to seasonal restaurants that are located on a lake. The language applies to up to three acres of restaurant property located on a lake. The restaurant must be seasonal as defined as devoted to commercial activity for not more than 250 consecutive days in a year or receive at least 60 percent of its gross receipts from business conducted in four consecutive months. To take advantage of the lower rate, the owner must submit an annual declaration to the assessor by February 1 of the current assessment year, based on the property's relevant information for the preceding assessment year.

Restroom Access

Minnesota law requires businesses that have restrooms for employee use only to also allow public use under some circumstances. Most hospitality businesses have public restrooms and don't fall under the bathroom access law. A few small coffee shops or limited-service hotels or resorts may be impacted and should know the requirements. The law is specific and quite limited in its application.

A retail establishment that has a restroom facility for its employees shall allow a customer to use that facility during normal business hours if the restroom facility is reasonably safe and all of the following conditions are met:

- the customer requesting the use of the employee restroom facility suffers from an eligible medical condition or uses an ostomy device, provided that the existence of the condition or device is documented in writing by the customer's physician or a nonprofit organization whose purpose includes serving individuals who suffer from the condition;
- three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom facility;
- the retail establishment does not normally make a restroom available to the public;
- the employee restroom facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the establishment; and
- a public restroom is not immediately accessible to the customer.

Transgender Restroom Access: "Transgender" refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (listed on their original birth certificate). The Equal Employment Opportunity Commission, the Department of Labor, the Office of Federal Contract Compliance Programs and the Occupational Safety and Health Administration have all issued guidance for employers stating that transgender employees should be allowed to use the restroom consistent with their gender identity.

Hospitality businesses are considered, in legal terms, to be public accommodations, a category that includes retail establishments, hotels, resorts, campgrounds, theaters and some other businesses. The U.S. Department of Justice has said publicly in a North Carolina case that access for transgender people is covered in Title VII of the Civil Rights Act. The **Minnesota Human Rights Act** prohibits discrimination based on gender identity. Guests should be allowed to use the restroom consistent with their gender identity.

Sales Tax

The Minnesota Department of Revenue has online resources with tax information for businesses at: **https://www.revenue.state.mn.us/businesses.**

Non-Profit Organizations and Government Exemptions: The Minnesota sales tax law specifically declares that the sales tax certificate of Exempt Status cannot be used to purchase meals and lodging. Tax must be paid on these services by most exempt organizations. The following are NOT exempt from sales tax for meals or lodging:

- nonprofit organizations such as educational, and religious organizations, senior citizen groups, veterans' organizations, civic clubs;

- school districts (except meals catered on school premises); and
- local government owned hospitals, nursing homes and public libraries.

The following agencies ARE exempt from sales tax for meals and lodging:

- federal government employees/representatives whose lodging is directly billed to and paid for by the federal government;
- federal government employees/representatives who use either an IMPAC Visa credit card or an American Express card with beginning digits of 37839;
- sales billed to and paid for by tribal governments; and
- lodging purchases by diplomatic representatives if they present special exception cards obtained from the Department of State's Office of Foreign Missions.

Statewide Sales Tax Amendment: A Constitutional Amendment was passed in 2008 to raise the sales tax 0.375% to fund the outdoors and the arts. In 2009, the statewide sales tax increased to 6.875%. This is in addition to any local sales taxes. You can consult the Minnesota Department of Revenue's tax calculator at: **https://www.revenue.state.mn.us/sales-tax-rate-calculator** to determine additional local taxes.

Sales Tax on Cities, Counties & Townships

Beginning in 2014, local units of government, including cities and counties, were exempt from paying the state or local sales tax on most of their purchases. Townships have had this exemption since 2011. The law specifically excludes purchases of lodging, restaurant meals and other prepared food from the new exemption. Businesses selling lodging, meeting services, meals, candy, soft drinks, alcoholic beverages or other prepared foods to local units of government must continue to charge and collect both the state and local sales taxes. The Minnesota Department of Revenue has a Local Governments Industry Guide that may be helpful in explaining this tax provision to local government employees who believe that their purchases are exempted from paying sales tax. It can be accessed at: **https://www.revenue.state.mn.us/guide/government-local-governments-industry-guide**

Seat Belts for Hotel Transportation

Minnesota law requires that a properly adjusted and fastened seat belt, including both the shoulder and lap belt, must be worn by the driver and passenger(s) of a passenger vehicle. The definition applies to cars, pick-up trucks and to vans that carry 15 or fewer passengers including the driver. Vehicles that carry 16 or more passengers are defined as buses and do not require seat belts under state law. There may, however, be insurance requirements in your policy that apply as well as brand standards that require seat belts for buses. There is an exemption in the statute for a person riding in

a vehicle in which all seating positions that have safety belts are occupied by other persons wearing their belts. See **Minn. Stat. 169.686**.

Service Animal Misrepresentation

Misrepresentation of a Service Animal: A new Minnesota law was passed in 2018 that makes it a crime to misrepresent an animal as a service animal as defined by the Americans with Disabilities Act (ADA) to qualify for the privileges available to a person who qualifies for a service animal. The first offense is a petty misdemeanor and subsequent offenses are a misdemeanor. The new law was effective on August 1, 2018.

Hospitality Minnesota created a poster that businesses ***may*** (but are not required to) post that welcomes service animals and educates the public about the penalties for misrepresenting a service animal. Members may download the poster for free on the Hospitality Minnesota website under "Resources." An employee training handout on service animals is also available for free download there.

For additional resources on service animals or requirements under the ADA, visit:
https://www.disability.state.mn.us/technical-assistance/service-animals/

or contact the Minnesota Council on Disability at (651) 361-7800 (VRS), (800) 945-8913 (VRS) or **council.disability@state.mn.us**. Minnesota was the 27th state to pass legislation making it a crime to misrepresent a pet as a service animal.

Also see the Americans with Disabilities Act section on page 59.

Setback Protections for Resorts & Campgrounds

The "Resort Preservation Act" allows resort and campground owners to maintain, repair or replace structures which may have grandfathered status in terms of setbacks from a lake or other body of water. A county or municipality must allow a resort or campground owner to:

- maintain structures, including the replacement of aging or outdated components or systems of the structure, while not increasing the structure's footprint on the land; and
- replace structures damaged or lost to fire or natural disaster.

A building permit must be applied for within 180 days of the fire or natural disaster.

See **Minn. Stat. 103F.227**

Shoreland Management

Existing statewide minimum shoreland management standards affect nearly all of Minnesota's lakes and rivers. These standards set guidelines for the use and development of shoreland property, including a sanitary code, minimum lot size, minimum water frontage, building setbacks, building heights and subdivision regulations.

For specific information on the state standards go to: **www.dnr.state.mn.us/waters/watermgmt_section/shoreland/index. html**. Local units of government with priority shorelands were required to adopt these or stricter standards into their zoning ordinances, so you should also check with your local government.

Increased development pressures around lakes have raised concerns about water quality and impacts on lake use. The state's existing shoreland standards do not adequately provide new and better tools to address those concerns nor do they properly address the needs for resort and campground development. Therefore, alternative, voluntary standards were created by an advisory group to give local governments some additional tools to manage development on their shorelines. These voluntary standards can be found at: **http://files.dnr.state.mn.us/waters/watermgmt_section/shore- land/Alt6120_12_12_2005.pdf**.

Smoking in a No-Smoking Room

Since 2008, an innkeeper can send a legal notice to a guest who smokes in a no-smoking room, requiring them to pay the cost of the damages plus a $30 service fee, and informing them that they could be subject to additional civil penalties if they do not pay damages within 30 days. If the charges are not paid, the innkeeper can seek damages in civil court, and if successful, have their attorney's fees, not to exceed $500, paid for by the violator. In addition, the bill removes the $100 cap on criminal penalties and allows the violator to be charged for the actual costs to return the room to its previous condition. The posting requirement of this law is met when you display innkeepers' law cards from your Association. They are available for free download under "Resources" at: **https://bit.ly/HM_InnkeepersRights**.

Also see Innkeepers' Laws on page 85.

Special Events & Seasonal Food Stands

There are three categories of food establishment licensing referred to as food stands. They are:

- ***Special event food stand*:** an establishment which is used in conjunction with celebrations or special events, and which operates for no more than 10 total days.

- ***Seasonal temporary food stand:*** a food and beverage service establishment that is disassembled and moved from location to location. The food stand must operate for no more than 21 days annually at any one location unless approved by the licensing agency.
- ***Seasonal permanent food stand:*** a food and beverage service establishment that is a permanent foodservice stand or building but operates no more than 21 days annually.

All food stands must operate in compliance with the Minnesota food code. Contact your local health inspector for more information about each category of food stand license. Additional information is available under:
https://www.health.state.mn.us/communities/environment/food/license/index.html

State Highway Access Permits

The Commissioner of Transportation was directed by the 2017 Legislature to establish a concise, expedited appeals process that allows an owner or occupant of a property abutting a trunk highway to appeal a denial or revocation of an access permit. The process will require that an owner or occupant must initiate an appeal within 30 days of the issuance of a denial or revocation by the Minnesota Department of Transportation (MnDOT). A hearing will be held by an administrative law judge who will, following the hearing of evidence and testimony, make a recommendation to the Commissioner within 30 days of the proceedings.

Swimming Pool Regulations

The definition of a swimming pool for regulatory purposes includes swimming pools, hot tubs, spas, wading pools, water parks, splash pads, plunge pools, lap pools, wave pools, water flumes and other miscellaneous structures where people enter the water. Fountains or water features that do not allow people to enter them are not swimming pools. The pools operated by resorts, hotels, inns, or campgrounds are public pools. Pools that are located in parks, schools, licensed childcare facilities, homeowner's associations, or group homes are also public pools.

Requirements for pools are contained in the Minnesota Pool Code (**Minn. Rules Chapter 4717**). The code is administered by the Minnesota Department of Health. Inspections and enforcement are delegated to some counties and cities and in other areas are provided by the Minnesota Department of Health. Some of the Minnesota Pool Code requirements include:

- ***Plan Review:*** The construction or alteration of a pool requires submittal and approval of plans and specifications. Plan review requires a fee. Construction cannot begin before plans are approved.
- ***Construction:*** Pools must be constructed in accordance with the appropriate construction standards.

- ***Personnel Training:*** Pools must be operated and maintained by trained personnel.
- ***Recordkeeping and Reporting:*** Operation and maintenance recordkeeping and reporting is required.
- ***Equipment & Signage:*** Lifesaving equipment and signage is required.
- ***Access and Fencing:*** Access to pools must be controlled to prevent unintended access.
- ***Water Sanitation and Condition:*** Pool water must be controlled and maintained in a safe manner.

This is a summary of important provisions in the code but isn't intended to be an exhaustive explanation. Always ask your local authority or the Department of Health when you are planning a new pool, a modification to an existing pool, or a change in your pool equipment. Some pool and equipment vendors will warrant that their plans and work will satisfy regulatory requirements. Visit the Department of Health website for pool information: **Public Swimming Pools - EH: Minnesota Department of Health (state.mn.us)**

Pool Drain Safety: **Minn. Stat. 144.1222** requires the installation of anti-entrapment drain covers and other systems to ensure that children or others cannot become trapped by pool drains. Important provisions include, along with other requirements that owners/operators must certify that:

- all outlets except for unblockable drains are equipped with covers that have been stamped by the manufacturer that they comply with ASME/ANSI standards;
- all covers and grates, including mounting rings, have been inspected to ensure that they have been properly installed and are not broken or loose; and
- all pools must have dual main drains connected in parallel or other protections to avoid entrapment injuries.

A separate federal law, the Virginia Graeme Baker Pool and Spa Safety Act, requires similar (but not identical) safety enhancements. Ask your vendor and local inspector to ensure that both state and federal requirements are met.

For accessibility issues, see the Americans With Disabilities Act section on page 59.

Tax Exemption Extensions and Expansions

The federal 2016 Omnibus Appropriations Act and subsequent federal legislation included important extensions of tax provisions that are important to the hospitality industry:

Qualified Improvement Property "QIP":
QIP is any improvement made by a taxpayer to interior nonresidential real property after building is placed in service. Examples of such qualifying improvements include installation or replacement of

drywall, ceilings, interior doors, fire protection, mechanical, electrical and plumbing. Excluded from the definition are improvements attributable to:

- enlargement of building;
- any elevator or escalator; or
- improvement to internal structural framework of a building.

There was a technical error in the 2016 legislation that classified such improvements on a 39-year depreciation schedule, rather than a 15-year depreciation schedule. One result of this was that such improvements would not qualify for bonus depreciation (bonus depreciation is anything that has a life 20 years or less), and thus would not get the immediate 100 percent deduction. One of the provisions in the federal Coronavirus Aid, and Economic Security "CARES" Act supported by Hospitality Minnesota fixed this technical error in QIP. Due to this correction such improvements:

- qualify for a 15-year depreciation schedule; and
- are eligible for bonus depreciation with no limitation to net income.

This policy incentivizes businesses to invest in their property.

Taking Action: Form 3115 and Amended Return Options: Taxpayers who filed returns that used a 39-year recovery period to depreciate post-2017 QIP can file a **Form 3115**, Application for Change of Accounting Method, or an amended return in order to take advantage of the new 15-year recovery period. Talk to your tax professional about your options.

Section 179 Deductions: In general, Section 179 of the IRS tax code allows businesses to deduct the full purchase price of qualifying equipment purchased or financed during the tax year. That means that if you buy (or lease) a piece of qualifying equipment, you can deduct the full purchase price from your gross income instead of writing it off a little at a time through depreciation. It's an incentive created by the U.S. government to encourage businesses to buy equipment and invest in themselves. The equipment purchase can be new or used to qualify for the section 179 deduction (as long as the used equipment is "new to you."). The equipment must be used for business purposes more than 50% of the time to qualify for the Section 179 Deduction and meet other eligibility requirements that your tax professional can help you assess.

In the 2020 legislative session, the Minnesota Legislature also passed section 179 legislation, a policy supported by Hospitality Minnesota and business coalition partners. For additional information, visit: **https://www.irs.gov/pub/irs-pdf/p946.pdf** and **https://www.revenue.state.mn.us/tax-law-changes**

Bonus Depreciation: Depreciation is an annual income tax deduction that allows you to recover the cost of certain property over the time you use the property. It is an allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation previously only covered new equipment, but now extends to used equipment. Bonus Depreciation is useful to businesses spending

more than the Section 179 Spending Cap (currently $3,050,000) on new capital equipment. Businesses with a net loss are still qualified to deduct some of the new equipment's cost and carry-forward the loss.

To be depreciable, the property must meet all the following requirements, it must:

- be property you own;
- be used in your business or income-producing activity;
- have a determinable useful life; and
- be expected to last more than 1 year.

Permanent extension of the enhanced charitable deduction for food donation: This change ensures that non-corporate entities such as S corps and LLCs can take advantage of an enhanced tax deduction when they donate food inventory to charity. The deduction helps foodservice businesses offset costs associated with preserving, storing and transporting food donations, and is aimed at helping reduce hunger in America.

Five-year Extension of the Work Opportunity Tax Credit: The Work Opportunity Tax Credit (WOTC) has helped move millions of people off public assistance into work by giving businesses a financial incentive to hire and retain individuals who have typically faced challenges in finding and holding onto jobs. Included among WOTC-eligible groups are certain veterans, food-stamp recipients and people referred from vocational-rehabilitation programs. The tax package extends the WOTC through 2019 and expanding it to apply to certain long-term unemployed individuals. Presently, the WOTC has been authorized until December 31, 2025.

Permanent Extension of the Enhanced Earned Income Tax Credit: The hospitality industry has been strongly supportive of the Earned Income Tax Credit (EITC) as an effective, targeted way to use the federal tax code to support lower-income wage earners. This is a more effective way to help low-income families than an extreme minimum wage.

Telephones

Posting Requirements: The following information must be posted on or near the telephone instrument, in plain view of consumers, as required by the Telephone Operator Consumer Services Improvement Act of 1990. Not posting this notice could result in a fine from the Federal Communications Commission (FCC). Requirements include:

- name, address and toll-free telephone number of the provider of operator services;
- written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

- name and address of the enforcement division of the common carrier bureau of the commission, to which the consumer may direct complaints regarding operator services.

Hotels and other lodging establishments providing telephone service must ensure that each telephone allows the consumer to use "800, 877, 888" and "950" numbers to obtain access to the long-distance service desired by the consumer. They must also ensure that no charge to the consumer for using an 800, 877, 888 and 950 number is greater than the amount charged for calls placed using the pre-subscribed provider of operator services.

Sales Tax on Telephone Access Charges: Charges by lodging establishments to guests for access to telephone services are taxable. Charges to guests for the actual cost of the telephone services are not taxable if the charge is separately stated on the guest's bill.

Many lodging properties use "call accounting systems" to track and determine the amount to charge guests for long distance telephone calls. Using these systems, the hotel operators don't know how much the actual telephone bill from the telephone company is until the following month. In this situation, the hotel must charge sales tax on the total amount billed to their guests for the long-distance service. The hotel must also continue to pay sales tax on its purchases of telephone service from the telephone company. However, the hotel is allowed to take a deduction from gross sales reported on its sales and use tax return for the amount billed to it by the telephone company for the actual cost of long-distance calls made by its guests. This practice is only allowable when the lodging establishment can distinguish between telephone calls billed to guests and its own administrative costs for telephone service.

Direct 911 Access for Guests & Employees: A tragic incident which occurred in a Texas hotel in 2013 has raised awareness about direct dial access to 911 emergency services from guest rooms. A nine-year-old girl was unable to reach 911 because she didn't know she had to dial 9 for an outside line while her mother was being stabbed by her estranged husband. There has been considerable interest in passage of "Kari's Law" to require lodging businesses to provide direct access to 911 for guests and employees without the need to dial 9 or any other prefix or suffix.

In 2018, federal legislation required that manufacturers of multi-line phones to create systems that allow callers to reach 911 without dialing a prefix or postfix. Some brand standards are also addressing this issue. Lodging operators should determine if their phone system or software can support direct 911 dialing.

Townhome/Condominium Association Rules

A 2017 law removed several potential barriers to the construction of new condominiums and townhomes. The law requires a majority of condo owners to pursue litigation (a condo association

board may take action for all owners under current law). It also requires mediation before a lawsuit for defects and damage can be filed. A condo association must also approve and follow a maintenance plan and schedule. The change is effective for new common interest communities established after the bill became law in 2017 and did not impact already existing common interest communities. The advocates believe that these changes will encourage more contractors to compete to build condo and townhome projects in the future and clarify the obligations of a resort to unit owners.

Undercooked Food (including a rare burger)

The revised Food Code outlines specific requirements for establishments to inform customers of potential health risks from eating raw food offered for consumption. Establishments are required to inform consumers about the significantly increased risk of eating meat, fish, dairy, and eggs that are sold or served raw or undercooked. The customers must be notified through disclosure that includes a description of the food that makes it obvious the food is raw ("raw Egg Caesar salad") or by asterisking the food item on the menu and referring to a footnote that states the product is raw or undercooked. The disclosure footnote must include a specific statement regarding the increased risk of foodborne illness from consuming the raw or undercooked product.

See **Minn. Rule Chapter 4626** and information from the Minnesota Health Department at **Minnesota Food Code (Minnesota Rules Chapter 4626)**

Municipal Hotel Licensing

Minnesota passed a law in the 2023 legislative session enabling all cities and towns to adopt ordinances requiring hotels to have and maintain a valid license issued by the municipality. This law, which became effective on July 1, 2023, specified that the sole condition of licensure municipalities can impose is that hotels comply with state and local laws, and provides municipalities with the ability to refuse to issue or revoke local licenses if the hotel fails to comply with the conditions of the license. The maximum annual fee for such a municipal hotel license is $150.00. Establishments should be aware of the potential for municipalities to begin requiring such licensure, and notably, two municipalities adopted some ordinances prior to the passage of the state law expressly permitting them: Waite Park and Roseville.

Waite Park Hotel Licensing

A law passed in 2017 authorized the city of Waite Park to adopt an ordinance to require a hotel, motel, or lodging establishment operating within the city's jurisdiction to have a valid license issued by the city. The license may prohibit the licensee from:

- knowingly allowing a room to be occupied for purposes of sex trafficking;
- knowingly allowing a room to be occupied for the purposes of illegal drug activity;
- knowingly allowing a room to be occupied by a minor for the consumption of alcoholic beverages;
- prohibiting the inspection of the licensed premises;
- failing to report observed or suspected illegal activity to the police in a reasonable period of time; and
- failing to maintain the licensed premises for all building, fire, mechanical, zoning or licensing codes.

The ordinance may provide for inspections related to the activities the license addresses. The city may collect a reasonable fee related to the cost of issuing the license and conducting inspections. The legislation applies only to the City of Waite Park.

Roseville Hotel Licensing

On April 8, 2024, the City Council of Roseville passed Ordinance 1674, which establishes Chapter 317 of Title 3 of the Roseville City Code, titled "HOTEL LICENSING REGULATIONS." In addition to establishing a procedure for applying for a license and the permissible bases for denial of a license, the Roseville ordinance creates minimum standards of operation which are required to maintain licensure, which require hotels to:

- Not knowingly permit the licensed premises to be used for any illegal purpose;
- To report observed or suspected illegal activity to the police within a reasonable period; and
- Not permit guests to purchase guestrooms on an hourly basis (instead, all guestrooms must be rented for overnight purposes, with the exception of contracted guestrooms for the purposes of complying with Department of Transportation sleep regulations and related federal or state law requirements).

The Roseville ordinance provides for random inspection of the hotel premises, although 24 hours' notice shall be given except in the case of emergencies. The ordinance also requires the maintenance of records regarding hotel guests, which must be made available to any law enforcement officer or other authorized City official upon a reasonable request. Further, if a guest or employee of a hotel makes an emergency call for service or reports any suspicious or illegal activity occurring at the hotel, all individuals related to the hotel shall cooperate with law enforcement during the ongoing investigation.

The Roseville ordinance lists numerous potential license violations, which can result in penalties including a fine, suspension, revocation, or imposition of license conditions. Some of these grounds include:

- Imposition of a fee for repeat nuisance service calls (under Chapter 511 of the City Code);
- A serious nuisance-related call which demonstrates a lack of control by the owner/operator of the hotel premises;
- Arrests related to illegal activity occurring on the hotel premises;
- Failing to notify the City of new "Interested Persons" within 30 days of any such individual becoming an Interested Person (defined as a person who will be an "on-site manager" of the hotel, the hotel's owners and/or operators, or individuals who have an interest of 5% or more in the entity applying for or holding the hotel's license).

All Roseville hotels must have applied for and obtained a license by January 1, 2025. The ordinance's licensing application procedures become effective September 1, 2024, and the provisions stating that licenses are required to operate hotels and that licenses automatically expire on December 31 of each year will not take effect in 2024. Similarly, the sections related to minimum standards of operations, penalties for license violations, and enforcement will not take effect in 2024. However, as of January 1, 2025, all provisions of the ordinance will be legally effective.

Window Washing Rules

Window washing rules apply when a worker is suspended more than 14 feet above the ground or a hard surface, such as a flat roof. The rule is being interpreted as applying to buildings, such as hotels, of four stories or taller. Minnesota OSHA published the rules following three fatal accidents in 2010. See **Minn. Rule 5205.0730**

The obligations placed on building owners or their representatives include:

- review of the written safety plan with the window washing contractor;
- written documentation of the identified and certified anchorages to window cleaning contractors and building maintenance contractors; and
- participation in an inspection of the building to identify and mitigate hazards.

Free Water At Places of Entertainment

Effective July 1, 2025, a place of entertainment that has a ticketed event with at least 100 attendees must provide access to free water and allow attendees to bring factory-sealed bottle water or an empty water bottle to access portable water. A place of entertainment is defined as all forms of entertainment, including but not limited to performances, concerts, motion pictures, amusement

parks, entertainment at fairgrounds, athletic or sport competitions, and all other forms of diversion, recreation or show.

Limits may be placed on the type and size of the allowable bottle. A place of entertainment will not be required to allow water in an exhibit, gallery or presentation space where beverages are prohibited if water is available outside the space.

RESOURCES

Laws, Rules and Ordinances

*Note: the below laws, rules, and ordinances do not represent the totality of applicable law to hospitality businesses. Instead, they are representative of some of the most industry-specific and important laws and rules for these businesses in Minnesota.

Minnesota Food, Beverage and Lodging Laws (Chapter 157)
Minnesota Lodging and Campground Laws (Chapter 327)
Minnesota Lodging Rules (Chapter 4625)
Minnesota Campground Rules (Chapter 4630)
Minnesota Property Tax Classification (Minn. Stat. 273.13)
Minnesota Local Option Lodging Tax (Minn. Stat. 469.190)

Minnesota Department of Revenue Resources

- **General business information**
- **Fact sheets and Industry Guides**
- **Food and Bar Establishments**
- **Food and Food Ingredients**
- **Hotels and Other Lodging Establishments**
- **Short-Term Rentals**
- **Sales and Use Tax**
- **Minneapolis Special Local Taxes**
- **Delivery Charges**
- **Vending Machines and Coin-Operated Devices**
- **Admissions and Amusement Devices**
- **Coupons, discounts, rewards, Rebates and Other Forms of Payment**

Minnesota Food Code (Minnesota Rules Chapter 4626)

Records Retention Schedule | For Guidance Only; Consult Profession Counsel to Verify

Item	Retention	Item	Retention
Accident reports and claims (settled)	7 years	Inventories of products, materials and supplies	7 years
AP ledgers/schedules	7 years	Invoices to customers, from vendors	7 years
AR ledgers/schedules	7 years	Journals	Permanently
Audit reports	Permanently	Legal correspondence	Permanently
Bank statements/reconciliations	3 years	Patents – related paperwork	Permanently
Bylaws/Charters/Minutes: directors and stockholders	Permanently	Payroll records, summaries and tax returns	7 years
Capital stock and bond records, ledgers, registers, issuance stubs, record of interest, options, etc.	Permanently	Personnel files	7 years
Cash books	Permanently	Petty cash vouchers	3 years
Charts of accounts	Permanently	Property records (plans, blueprints, costs and depreciation schedules)	Permanently
Checks (canceled, exceptions follow)	3 years	Purchase orders (Not Purchasing Dept.) Purchase orders (Purchasing Dept copy)	1 year 7 Years
Checks (canceled, important payments, i.e. taxes, property purchase, special contracts, etc. | file with underlying transaction)	Permanently	Receiving sheets	1 year
Contracts and leases - expired	Permanently	Requisitions	1 year
Contracts and leases - in effect	Permanently	Retirement and pensions	Permanently
Correspondence (routine) w/customers and vendors	2 years	Safety records	6 years
Correspondence (general)	2 years	Sales commission reports Sales records	3 years 7 years
Correspondence (legal and critical)	Permanently	Scrap and salvage records (inventories, sales, etc.)	7 years
Deeds, mortgages, and bills of sale	Permanently	Stock and bond certificates (canceled)	7 years
Depreciation schedules	Permanently	Stockroom withdrawal forms	1 year
Duplicate deposit slips	2 years	Subsidiary ledgers	7 years
Employment applications	3 years	Tax returns and worksheet, revenue agent reports and documents relating to determination of income tax liability	Permanently
Financial statements (year-end)	Permanently	Tax withholding statement	7 years
Garnishments	7 years	Timecards and daily reports	7 years
General/private ledgers (year-end)	Permanently	Trademark registration and copyrights	Permanently
Insurance policies – general (expired)	3 years	Training manuals	Permanently
Insurance policies – liability	Permanently	Union agreements	Permanently
Insurance records, current accident reports, claims, policies, etc.	Permanently	Voucher register and schedule	7 years
Internal audits and reports	3 years	Vouchers payments to vendors, employees, etc. (allowances/ reimbursement for travel/entertainment)	7 years
This information is provided with the understanding that it is presented in general terms and is not intended to be used as the basis for specific action without obtaining the advice of a competent financial, tax or legal professional.			