



## December 2014 Tip of the Month

### Wage Claims

Submitted by Glendon Drew, VLN Resource Attorney

VLN clinics serve a number of clients involved in disputes with former employers over unpaid wages. The timing of an employee's pay depends upon the circumstances of the employment termination. Different statutes, albeit with similar remedies, apply to wage claims depending on whether the employee quit or resigned, or whether the employee was discharged or terminated by the employer. This month's tip provides basic information to assist attorneys in assessing wage claims and determining the applicable law.

#### I. DISPUTES WITH FORMER EMPLOYERS

##### a. ASSESS COLLECTABILITY OF ANY JUDGMENT

- Before any former employee decides to sue their former employer for unpaid wages, the employee should assess the likelihood that he or she will actually be able to enforce any judgment against the former employer. If the employer is a corporation or LLC that is no longer in operation, has filed for bankruptcy or no longer has any income or assets, suing them may be pointless from an economic standpoint.
- In such situations, time spent looking for new employment, applying for unemployment benefits, etc. may be more likely to help the employee meet his or her basic living needs than time spent litigating against a defunct or bankrupt entity.

##### b. PENALTY FOR FAILURE TO PROMPTLY PAY WAGES TO A DISCHARGED EMPLOYEE

- *Wages Due Upon Demand* – Pursuant to [Minn. Stat. § 181.13, subd. a](#), when any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee.
- Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.
- *Default if Not Paid Within a Day of Demand* - If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default.
- *Penalty = to 15 days average daily earning* - In addition to recovering the wages and commissions actually earned and unpaid, the discharged employee may charge and collect a penalty equal to the amount of the employee's average daily earnings at the

employee's regular rate of pay or the rate required by law, whichever rate is greater, for each day up to 15 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made.

- Public Employers - In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment does not commence until the date of the first regular or special meeting of the governing board following discharge of the employee.
- Written Demand Required - An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions.
- An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other related remedies as provided in this section.
- Payment in the Usual Manner - Pursuant to Minn. Stat. § 181.13, subd. (b), the wages and commissions must be paid in the usual manner of payment unless the employee requests that the wages and commissions be sent through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions are paid as of the date of their postmark.

**c. PENALTY FOR FAILURE TO PROMPTLY PAY WAGES TO AN EMPLOYEE WHO QUIT OR RESIGNED.**

- Prompt Payment Usually Required By Next Payday – Pursuant to Minn. Stat. § 181.14 subd.(a), when any such employee quits or resigns employment, the wages or commissions earned and unpaid at the time the employee quits or resigns shall be paid in full not later than the first regularly scheduled payday following the employee's final day of employment, unless an employee is subject to a collective bargaining agreement with a different provision.
- Wages are earned and unpaid if the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.
- Timing of Payment & Payday - If the first regularly scheduled payday is less than five calendar days following the employee's final day of employment, full payment may be delayed until the second regularly scheduled payday but shall not exceed a total of 20 calendar days following the employee's final day of employment.
- Migrant Workers - In the case of migrant workers, as defined in section [181.85](#), the wages or commissions earned and unpaid at the time the employee quits or resigns shall become due and payable within five days thereafter.

- Wages Due Upon Demand - Wages or commissions not paid within the required time period shall become immediately payable upon the demand of the employee.
- Penalty = to 15 days average daily earning - If the employee's earned wages or commissions are not paid within 24 hours after the demand, the employer shall be liable to the employee for a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for every day, not exceeding 15 days in all, until such payment or other settlement satisfactory to the employee is made. The employer shall also be liable to the employee for the amount of wages and commissions that are earned and unpaid.
- Written Demand Required - An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions.
- An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other remedies related thereto as provided in this section.
- Settlement of Disputes - If the employer disputes the amount of wages or commissions claimed by the employee under the provisions of this section or section [181.13](#), and the employer makes a legal tender of the amount which the employer in good faith claims to be due, the employer shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having jurisdiction, the employee recovers a greater sum than the amount so tendered with interest thereon; and if, in the suit, the employee fails to recover a greater sum than that so tendered, with interest, the employee shall not pay the cost of the suit, otherwise the cost shall be paid by the employer.
- Employees entrusted with money or property - In cases where the discharged or quitting employee was, during employment, entrusted with the collection, disbursement, or handling of money or property, the employer shall have ten calendar days after the termination of the employment to audit and adjust the accounts of the employee before the employee's wages or commissions shall be paid as provided in this section, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of the period allowed for payment of the employee's wages or commissions. No employer shall make any deduction, directly or indirectly, from the wages due or earned by any employee, who is not an independent contractor, for lost or stolen property, damage to property, or to recover any other claimed indebtedness running from employee to employer, except as permitted by section [181.79](#).
- Payment in the Usual Manner - Wages and commissions paid under this section shall be paid in the usual manner of payment unless the employee requests that the wages and commissions be sent to the employee through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

**Practice Tool:** As a VLN volunteer, you have access to many resources to help you provide pro bono services. While we encourage our volunteers to draft wage demand letters tailored to the facts of each case, you may find the demand letter template below, a helpful tool to get you started.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Employer's address*

*RE: Wage Claim for* \_\_\_\_\_ *(employee's name)*

Dear \_\_\_\_\_ *(employer's name):*

This letter is a formal demand for the payment of my unpaid wages pursuant to Minn. Stat. § 181.14.

My unpaid wages include work which was performed for

\_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_. I was employed as a \_\_\_\_\_, and am owed for approximately \_\_\_\_\_ hours of work. I earned \$\_\_\_\_\_ per hour in wages. The total amount owed to me is \$\_\_\_\_\_. Please send payment to me by \_\_\_\_\_ to the address provided below.

Please be advised that under Minnesota Law Stat. § 181.14. an employer is required to pay employees wages promptly. If earned wages are not paid within 24 hours after demand, the employer is liable to the employee for damages. The statute reads in part:

"Wages or commissions not paid within the required time period shall become immediately payable upon the demand of the employee. If the employee's earned wages or commissions are not paid within 24 hours after the demand, the employer shall be liable to the employee for an additional sum equal to the amount of the employee's average daily earnings provided in the contract of employment, for every day, not exceeding 15 days in all, until such payment or other settlement satisfactory to the employee is made."

If I have not received all the wages owed to me by the date above, I will be left with no choice but to bring this matter to conciliation court.

Sincerely,

\_\_\_\_\_  
*(signed)*

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*Employee's current address*

***Retain Original***

***Mail 1 Copy to Employer***

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If you would like to help low-income clients with their civil law needs or learn more about VLN clinics, please contact Glen Drew at (612) 752-6659 or via email at [glen@vlmn.org](mailto:glen@vlmn.org).