



Tip of the Month January 2018 The Cold Weather Rule Update

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Credit to Paul Moe and Tyler Candee (Faegre Baker Daniels) for the original Cold Weather Rule Tip from November 2006

For those of us living in northern climates, we are guaranteed at least two things in the fall: It will get colder and our heating bills will go up. Fortunately, there is some protection for those people who struggle to meet the increased costs of heating in the winter.

Dubbed the “Cold Weather Rule,” Minn. Stat. 216B.096 gives residential utility customers who have fallen behind on their utility bills the opportunity to establish a payment plan to prevent the disconnection of their utilities during the winter months (October 15 through April 15).¹

It is important to note that the Cold Weather Rule does not stop utility providers from disconnecting heating utilities between October 15 and April 15. It simply provides customers who are struggling to keep up with increased heating costs in the winter the opportunity to spread those payments out over a longer period of time.

Notice:

Utility companies must provide proper notice to customers before it can shut off any utilities. Proper notice must be given once generally to all customers in the fall and then once again to individual customers who are in danger of having their utilities shut-off.

General Notice: Each fall, between September 1 and October 15, utilities are required give all customers a summary of their rights and responsibilities with regard to their heating utilities.² The summary is statutorily required to include an explanation of the Cold Weather Rule, suggestions for low or no cost methods to reduce energy use, ways to avoid disconnection, information regarding payment agreements, an explanation of appeal rights and contact information for local energy assistance and weatherization providers.³ This notice is not to warn any customer of an impending shut-off, but to alert customers in advance to ways they can reduce their heating costs and seek help if they should find they need help with heating expenses.

Notice before disconnection: When a customer has fallen behind on utility payment and is in danger of being disconnected, the utility provider must give notice to customers before disconnecting the utility. The notice must be mailed at least ten working days or personally

¹ The Cold Weather Rule only applies to electric and gas companies and only if used as the customer’s primary heating source. Delivered fuels such as fuel oil, propane and wood are not covered by the statute.

² This same notice must be provided to all new residential customers at the time service begins. Minn. Stat. §216B.096, Subd. 3.

³ The summary must also include information on how to designate a third party to receive notices to disconnect. Minn. Stat. §216B.096, Subd. 2(7)(i).

delivered at least seven working days before the disconnection.⁴ The notice must be commission-approved, and must be in easy-to-understand language that contains the date of the scheduled disconnection, the amount due, and include another summary of rights and responsibilities.

Payment Plans:

Once a customer receives a notice before disconnection, they must take pro-active steps to stop a utility shut-off. The most common steps are to set-up a payment plan with the utility company and to seek assistance with energy payments.

The heat will be disconnected if the customer does not enter into a payment plan or does not make reasonably timely⁵ payments pursuant to an agreed upon payment plan.

Payment plans have some statutorily mandated perimeters. For individuals whose household income is at or below 50% of the state median income,⁶ the utility company may not require a customer to pay more than 10% of their household income toward current and past utility bills in order to maintain heating service.

For those who have a household income above 50% of the state income guidelines, the payment plan must take into consideration the customer's financial circumstances and other extenuating circumstances of the household.

If a customer's financial circumstances change during the payment plan period or the customer becomes unable to make reasonably timely payments, the customer or a designated third party may request a modification to the payment agreement.

Once a payment plan has been entered into, the utility company is required to make reasonable efforts to restore service to the customer within 24 hours.

If the customer and utility provider cannot come to an agreement on a payment plan or if the customer disagrees with the determination that their income is above the 50% median income guideline, it is possible to appeal. Appeals must be made within 7 working days of personal service of an appeal notice or within 10 working days of the appeal notice being mailed to the customer. Utility service must remain connected during the appeal process. The commission determines all appeals on an informal basis within 20 working days of receipt of the appeal.

Additionally, it is important to note that payment plans and the protections of the Cold Weather Rule end on April 15 unless the parties specifically agreed otherwise.

⁴ "Working days" are defined by the statute as Monday through Friday, excluding holidays. Minn. Stat. §216B.096, Subd. 2(l).

⁵ "Reasonably timely" means a payment within 5 days of the agreed upon date in the payment plan. Minn. Stat. §216B.096, Subd. 2(f).

⁶ For a list of how income is verified, see Minn. Stat. §216B.096, Subd. 6 .

Also, disconnections are statutorily prohibited from occurring during an appeal under the statute; on a Saturday, Sunday, holiday, day before a holiday or a day when the commission offices are closed. Shut-offs are prohibited on Fridays unless the utility company makes personal contact with and offers a payment agreement plan to the customer.⁷

Renters:

The Cold Weather Rule also protects renters who have utility bills in their own names. However, falling behind on utility payments or causing utilities to be disconnected can leave tenants in breach of their lease. Accordingly, depending on the language of a lease, tenants can be evicted regardless of whether a payment agreement is reached with the utility provider. Tenants may need to seek a separate agreement with their landlord to avoid eviction in this situation.

If the landlord is responsible for utility payments and fails to make timely payments, notice of the disconnection will be posted on the property. A tenant who sees this situation must alert the landlord.⁸ If the landlord fails to fix the situation, tenants may bring an emergency repair action in court.⁹ Alternatively, pursuant to Minn. Stat. 504B.215, a tenant may pay the utility company directly and deduct the amount paid from rent. Caution should be advised with both of these remedies, however, as there may be other repercussions in doing so.

Resources available:

A list of organizations, state-wide, that provide energy assistance can be found on the Minnesota Department of Commerce's website at:
<https://mn.gov/commerce/consumers/consumer-assistance/energy-assistance/eap-provider.jsp>.

⁷ Minn. Stat. §216B.096, Subd. 7(c).

⁸ See Minn. Stat. 504B.215, Subd. 3.

⁹ For information on Emergency Tenant Remedies Action (ETRA), see Minn. Stat. 504B.381.