

METROPOLITAN AIRPORTS COMMISSION

ORDINANCE NO. 129

MINNEAPOLIS-ST. PAUL INTERNATIONAL AIRPORT

MINIMUM WAGE ORDINANCE

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METROPOLITAN AIRPORTS COMMISSION
MSP AIRPORT MINIMUM WAGE ORDINANCE

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METROPOLITAN AIRPORTS COMMISSION

MINNEAPOLIS-ST. PAUL INTERNATIONAL AIRPORT MINIMUM WAGE

ORDINANCE NO. 129

An Ordinance to promote and conserve public welfare, public safety, health, peace, convenience and national security and at the Minneapolis-St. Paul International Airport, by regulating through its police powers the wages paid to certain Employees working at Minneapolis-St. Paul International Airport, a public airport under the operation, direction and control of the Metropolitan Airports Commission.

The Metropolitan Airports Commission does ordain:

SECTION 1 – FINDINGS AND PURPOSE

1.1 Findings and Purpose

Organized as a public corporation under Minnesota Statutes Section 473.603, the Metropolitan Airports Commission has broad authority through its police powers to enact regulation to further the public welfare, public safety, health, peace, convenience and national security at the Minneapolis-St. Paul International Airport.

SECTION 2 – DEFINITIONS

- 2.1 Airport. The Minneapolis-St. Paul International Airport, Wold-Chamberlain Field, a public airport under the supervision, operation, direction and control of the Metropolitan Airports Commission, and located in the County of Hennepin and State of Minnesota, including all property owned by the MAC at MSP Airport.
- 2.2 Commission or MAC. The Metropolitan Airports Commission, a public corporation organized and operating pursuant to Chapter 500, Laws of Minnesota 1943 and amendments thereto.
- 2.3 Department. The MAC Human Resources & Labor Relations Department or its successor in function.
- 2.4 Director. The Vice President of Human Resources & Labor Relations or their successor in function or their designee.
- 2.5 Employee. The meaning given in Minnesota Statutes, Section 177.23. For purposes of this Ordinance, Employee does not include the following persons:
- (a) Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.600-6070 and participating in the Minnesota Statutes, Section 268A.15 extended employment program, as they may be amended from time to time, and
 - (b) An individual operating as an independent contractor as defined in Minnesota Statutes Section 181.723, subd. 4.

- 2.6 Employer. Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an Employer in relation to an Employee. For purposes of this Ordinance, "Employer" does not include any of the following:
- (a) The United States government.
 - (b) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
 - (c) Any county or local government, except MAC.
 - (d) Providers with certificates issued by the United States Department of Labor or the Minnesota Department of Labor and Industry for purposes of subminimum wage payments pursuant to Minnesota Statutes, Section 177.28 and Minnesota Rules part 5200.0030, but only to the extent of the workers specifically covered by the subminimum wage certificate.
- 2.7 Executive Director/CEO. The Commission's chief executive officer or their designated representative.
- 2.8 Hearing Officer. A designee of the Executive Director/CEO or a third party authorized by the Executive Director/CEO who shall conduct hearings, hear evidence and make a final determination regarding violation(s) of this Ordinance.
- 2.9 Hours Worked. Has the meaning as prescribed in the Fair Labor Standards Act and Title 29, Part 785 of the Code of Federal Regulations, and as amended.
- 2.10 Tips or Gratuities. 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.
- 2.11 Wage. Compensation due to an Employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value. The term Wage does not include health insurance or other benefits provided to Employees.

SECTION 3 – SCOPE

3.1 All Airport Employers

This Ordinance applies to all Employers at the Airport.

3.2 Employees Required to be Paid the Minimum Wage

Subject to the subsections below, Employers are required to pay its Employees a wage in compliance with Section 4 for all Hours Worked (full or partial) at the Airport in the performance

of services materially affecting the traveling public utilizing the passenger terminals at the Airport including but not limited to the following:

Passenger-Related Security Services

Escort
Catering Security
Passenger Aircraft Security
Terminal and Building Security
Traffic Security

Ramp and Aircraft Services

Baggage Handling
Load Control and Ramp Communication
Aircraft Maintenance, Fueling, Washing
Provision of Water, HVAC and Power
Aircraft Equipment and Lavatory Services
Passenger Aircraft Servicing
Cabin Equipment Maintenance
Aircraft Ground Movement Services
Gateside Aircraft Maintenance
Ramp Area Cleaning
Deicing and Glycol Recovery Services
Jet Bridge Maintenance
Ground Service Equipment Maintenance
Wheelchair Repair

In-Terminal and Passenger Handling Services

Baggage Handling, Recovery and Delivery
Skycap
Wheelchair Assistance
Ticketing
Customer Service
Queue Management
Registered Traveler Programs
ID Checkers
Baggage Porter Services
Passenger and Employee Shuttle Services

In-Flight Catering Services

Food preparation and packaging, inspection, delivery, cleaning, etc. for commercial aircraft operations

Cleaning Services

Terminal and Hotel Building and Public Space Janitorial/Cleaning
Aircraft Cabin Cleaning
Aircraft Washing

Concession Services

In-Terminal Food Service – quick-serve, sit-down, bar, busing, cashier, catering, etc.

In-Terminal Retail Service – retail, news/gift, duty-free, etc.

In-Terminal Passenger Service – spa, banking, currency exchange, food delivery, medical services, luggage carts and lockers, shoeshine, etc.

Airport Lounge Services

Hotel

Rental Auto Service

- (a) An Employee who is based outside the Airport and performs work at the Airport on an occasional basis is covered by this Ordinance if the Employee in a particular workweek performs at least two (2) hours of work for an Employer within the geographic boundaries of the Airport.
- (b) Time spent at the Airport solely for the purpose of traveling through the Airport from a point of origin outside the Airport to a destination outside the Airport, with no employment-related or business-activity stops in the Airport, is not covered by the Ordinance. For purposes of this provision, Employee personal meals or errands do not constitute employment-related or commercial stops.
- (c) Time spent at the Airport solely for the purpose of traveling on a commercial or private flight as a passenger departing or arriving at the Airport is not covered by this Ordinance.

SECTION 4 – MINIMUM WAGE

4.1 Minimum Wage

- (a) An Employer shall pay an Employee covered by this Ordinance, a Wage, exclusive of benefits, of no less than the hourly rates set under the authority of this Ordinance for all Hours Worked at the Airport.
- (b) On January 1, 2021, the hourly Wage shall be thirteen dollars and twenty-five cents (\$13.25).
- (c) On July 1, 2021, the hourly Wage shall be fourteen dollars and twenty-five cents (\$14.25).
- (d) On July 1, 2022, the hourly Wage shall be fifteen dollars (\$15.00).
- (e) Beginning January 1, 2023, the hourly Wage shall be adjusted annually on January 1 by adding the then-current hourly Wage plus the inflationary figure as determined in sub-section (f) below. For example, on January 1, 2023, the hourly Wage will be fifteen dollars (\$15.00) plus the inflationary figure.
- (f) No later than September 1 of each year, beginning in 2022, the Director shall determine the inflationary figure in the minimum Wage rate in subsection (e) based on the percentage increase calculated by the Commissioner of Labor and Industry as required in Minnesota Statutes Section 177.24, Subdivision 1(f). For 2022 only, the inflationary figure shall be divided by two to determine the January 1, 2023 adjustment. For subsequent years, the

inflationary figure shall be the full percentage increase rounded to the nearest cent. A minimum Wage rate shall not be reduced under this subsection. The Director shall announce the adjusted minimum Wage rate by September 8 of each year. The new minimum Wage rate determined under this subsection shall take effect on January 1 of each subsequent year.

4.2 Tips and Gratuities

No Employer may directly or indirectly credit, apply, or utilize Tips or Gratuities towards payment of the minimum Wage set by this Ordinance.

SECTION 5 – POSTING OF NOTICE TO EMPLOYEES AND RETALIATION PROHIBITED

5.1 Notices

On an annual basis, the Department shall publish and make available to Employers, in English and other languages as determined by the Department, notices suitable for posting by Employers in the workplace informing Employees of the current minimum Wage rate and their rights under this Ordinance.

5.2 Posting of Notices

Every Employer shall post, in a conspicuous place at every workplace or job site where any Employee works, the notices described in Section 5.1. Every Employer shall post this notice in English, and in any other language, if published by the Department. If Employees for multiple Employers share workspaces or job sites, the Department may allow, in its sole discretion, a single posting covering multiple Employers in such an area provided the Notice meets all other requirements of this Section.

5.3 Retaliation Prohibited

It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance, including, but not limited to, inquiring, disclosing, reporting, or testifying about any violation of this Ordinance. An Employer shall not take adverse employment action or discriminate against an Employee because the Employee has exercised rights under this Ordinance.

It shall be a rebuttable presumption of retaliation if an Employer takes an adverse action against an Employee within ninety (90) days of the Employee's exercise of any right protected by this Ordinance. An Employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

A Person injured by a violation of this subsection may bring a civil action in district court for any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive or other equitable relief as determined by the court.

SECTION 6 – EMPLOYER RECORDS

6.1 Records Requirements

An Employer shall create and retain records documenting Wages paid to each Employee. Such records shall be retained for a period of not less than three (3) years from the date such hours were worked.

6.2 Employee Inspection

An Employer must allow an Employee to inspect records required by this Ordinance and relating to that Employee at a reasonable time and place. If requested by an Employee, an Employer shall make such records available to the requesting Employee immediately preceding or following one of the Employee's shifts.

6.3 Audit

The Department shall have access to the records required by this Ordinance, with appropriate notice and at a mutually agreeable time, to monitor, establish or investigate compliance with the requirements of this Ordinance, including, but not limited to, inspections of books and records, interviewing Employees and former Employees, and investigating alleged violations of this Ordinance.

6.4 Failure of Records

If an Employer fails to create and/or retain adequate records or does not allow the Department reasonable access to the records, then any alleged violation(s) of an Employee's rights under this Ordinance shall be presumed violated. An Employer may challenge the presumption only with clear and convincing evidence otherwise.

SECTION 7 – INVESTIGATIONS, ENFORCEMENT, AND VIOLATIONS

7.1 Director's Authority

The Director has broad authority to implement, administer and enforce this Ordinance. The Director shall have broad authority to investigate possible violations of this Ordinance whenever there is cause to believe that a violation of this Ordinance has occurred. The Director may promulgate appropriate rules to implement, administer and enforce this Ordinance. Such rules shall:

- (a) Be consistent with this Ordinance and may be relied on by Employers, Employees, and other persons to determine their rights and responsibilities under this Ordinance.
- (b) Establish procedures for fair, efficient, and cost-effective implementation and enforcement of this Ordinance, including rules ensuring timely review of reports of violation and governing procedure for any appeals to a Hearing Officer.
- (c) Establish procedures for informing Employers of their duties and Employees of their rights under this Ordinance and monitoring Employer compliance.

The Director shall publish, maintain, and make available to the public any such initial rules at least ninety (90) days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least thirty (30) days prior to their effective date.

7.2 Employee Complaints of Violations

An Employee or other person may report to the Department any suspected violation of this Ordinance. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Ordinance and within three hundred sixty-five (365) days prior to filing of the report. Nothing in this Section is intended to limit the Director's broad authority to investigate possible violations of this Ordinance whenever the Director has cause to believe that any violation of this Ordinance has occurred.

7.3 Investigation process

- (a) The Department has sole discretion to decide whether to investigate or to pursue a violation of this Ordinance. If the Department decides not to investigate or otherwise pursue a report of suspected violation, the Department must provide a written notification to any Employee or other person who filed the report that the Department is declining to further investigate the report and reason for declining. The Employee within twenty-one (21) days, may file a request for reconsideration with the Director. The Director must provide a written response on the reconsideration within ten (10) days.
- (b) The Department may initiate an investigation pursuant to a complaint or when the Director has reason to believe that a violation has occurred. To pursue a violation of this Ordinance, the Director must serve a notice of investigation setting forth the allegations and pertinent facts upon an Employer by U.S. mail. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information. The notice shall also inform the Employer that retaliation for claiming rights under this Ordinance is a basis for additional monetary damages.
- (c) An Employer's position and response to any request for records must be provided to the Department as within twenty-one (21) days. An Employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the Department pursuant to an investigation creates a rebuttable presumption of a violation of this Ordinance for the purposes of the investigation and determination of violation. An Employer that fails to respond to a request for records may not use such records in any appeal pursuant to challenge the correctness of any determination of violation by the Director of damages owed or penalties assessed.
- (d) Investigations shall be conducted in an objective and impartial manner.
- (e) The Department shall consider any statement of position or evidence with respect to the alleged violation which the Employee or person who filed the report of suspected violation or Employer wishes to submit.

- (f) The Department may require a fact finding conference or participation in another process with the Employer, Employee, or other person who filed the report of a suspected violation, and any of their agents and witnesses during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues that can be resolved and afford an opportunity to discuss or negotiate settlement.

7.4 Director Determination of Violation

Except when there is an agreed upon settlement, the Director must issue a written determination of violation with findings of fact resulting from the investigation and a statement of whether a violation of this Ordinance has or has not occurred based upon a preponderance of the evidence before the Department. The determination of violation must be issued to the Employer and any Employee or other person who filed the suspected violation report and include any fines, reinstatement, back pay, compensatory damages, interest, or other remedies.

For purposes of this Ordinance, a separate violation occurs for each pay period for each employee not conforming to the requirements of this Ordinance. Notwithstanding the foregoing, the Director may reduce the number of violations after weighing the unique factors of a case, including, but not limited to, evidence of Employer's lack of intent, lack of notice to Employer of violative activity, the amount of time required to remedy a violation, and the reasonableness of Employer's payroll processes related to any violation.

If there is no appeal of the Director's determination of a violation, that determination of violation shall constitute the Commission's final decision. An Employer's failure to appeal the Director's determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the Commission regarding the Director's determination of a violation.

7.5 Relief and Administrative Fines

If an Employer is found to have violated this Ordinance, the Director shall order the Employer to cease and desist from engaging in the violative practice and may order any appropriate relief, including, but not limited to:

- (a) Reinstatement, back pay, and compensatory damages, less any amount actually paid to the Employee by the Employer, and for an additional equal amount as liquidated damages.
- (b) Payment of a civil penalty of up to one thousand dollars (\$1,000.00) for each violation for each Employee by an Employer who is found to have repeatedly or willfully violated this Ordinance. In determining the amount of the civil penalty, the size of the Employer and the gravity of the violation shall be considered.
- (c) Reimbursement of the Department for all appropriate costs expended in enforcing this Ordinance, unless the payment of costs would impose an extreme financial hardship on the Employer, in which case the Director may order the payment of a percentage of costs expended which will not cause extreme financial hardship on the Employer.

- (d) Payment to the Department of a fine of up to one thousand dollars (\$1,000.00) for each failure to comply with Records section of this Ordinance. In determining the amount of the fine, the size of the Employer and the gravity of the violation shall be considered.
- (e) Payment to the Department of a fine of up to two hundred dollars (\$200.00) for each failure to comply with Notice and Posting sections of this Ordinance. In determining the amount of the fine, the size of the Employer and the gravity of the violation shall be considered.
- (f) Payment to the Department of a fine of not less than seven hundred dollars (\$700.00) nor more than three thousand dollars (\$3,000.00) for each violation of Retaliation Sections of this Ordinance.
- (g) The maximum sanctions authorized in subsections (b), (d), (e) and (f) shall be trebled for third and subsequent violations in each category.
- (h) In any determination of violation under this Ordinance, the Director or Hearing Officer, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in Minnesota Statutes, Section 549.09.

The Director shall impose deadlines for the performance of each remedy or penalty imposed. The remedies, penalties, and procedures provided under this Ordinance are cumulative. Payment of fines, interest, reinstatement, back pay, and compensatory damages must be received within twenty-one (21) calendar days of the date on which the determination of violation is dated, or where a hearing is requested, within twenty-one (21) calendar days of the date of the Commission's final action affirming the determination of violation.

7.6 Hearing Procedure

- (a) An Employee, former Employee, or Employer may appeal from a determination of violation or penalty by filing an appeal in writing with the Department within twenty-one (21) days of notice of the determination of violation. Failure by the Employer to file a timely, written appeal shall constitute admission to the violation, and the violation shall be deemed final upon expiration of the twenty-one (21) day period. Upon an appeal of the Director's determination of a violation, the Department shall refer the matter to a Hearing Officer who is authorized by the Executive Director/CEO to hear such appeals.
- (b) In such appeal, the Hearing Officer shall consider the record submitted to it by the Department, the written statements of positions by the parties involved and the contents of the hearing. The hearing shall be conducted by the Hearing Officer, shall be recorded by a digital recorder or by a qualified reporter, and shall proceed as follows:
 - 1. The Director shall present evidence which supports the facts constituting grounds for the determination of violation.
 - 2. The party requesting the hearing may appear in person, may be represented by counsel, may cross-examine Director's witnesses who are present, and may present any relevant evidence which the Person has relating to the facts constituting grounds for the determination of violation. The evidence at the

hearing shall be limited to that which is relevant to the facts which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs constituting grounds for the determinations of violation and may include hearsay evidence.

3. All testimony shall be taken under oath, but both the Director and the party requesting the hearing may introduce testimony under oath in the form of sworn statements if witnesses are unavailable or refuse to appear in person.
 4. The Director must prove that the Employer violated this Ordinance by a preponderance of the evidence.
 5. The Hearing Officer shall hear the evidence and shall make findings concerning the facts and conclusions of law relevant to the violation(s) set forth in the determinations of violation and penalty imposed.
 6. The Hearing Officer shall issue a report in writing stating their findings, conclusions and decision as soon as practical following the hearing.
- (c) The Department shall notify the Employer and the Employee who filed the suspected violation report at issue of the Hearing Officers' decision.
- (d) The Hearing Officers' decision of the appeal shall constitute the Commission's final decision without any further right of administrative appeal. An Employer or Employee, to the extent provided by law, may appeal the Hearing Officers' decision by petition for writ of certiorari to the Minnesota Court of Appeals pursuant to Minnesota Statutes, Section 606.01

7.7 Civil Enforcement and Private Cause of Action

- (a) Where prompt compliance is not forthcoming with a final determination of violation, the Department may refer the action to the Commission's Office of Legal Affairs to consider initiating a civil action in a court of competent jurisdiction against an Employer, for violating any requirement of this Ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of lost Wages, the payment of an additional sum as a civil penalty not to exceed twice the amount awarded for lost Wages, and reinstatement in employment and/or injunctive relief and shall be awarded reasonable attorneys' fees and costs.
- (b) An Employee may bring a civil action in district court seeking redress for a violation or violations of this Ordinance within forty-five (45) days after receipt from the Director of a notice of determination of no violation of this Ordinance or, if applicable, within forty-five (45) days after receipt of notice that the Director has reaffirmed a determination of no violation of this Ordinance if the Employee requested reconsideration. For purposes of this subsection, notice is presumed to be received five (5) days from the date the notice was mailed by the Director. An Employee who prevails in a civil action filed under this subsection is entitled to the same relief that would be available to the MAC under subsection (a) of this section.

SECTION 8 – GENERAL PROVISIONS

8.1 Penalty

Any Person violating any of the provisions of this Ordinance shall upon conviction be punished by sentence within the parameters of the maximum penalty for misdemeanors set forth in Minnesota Statutes Section 609.03 or as amended.

8.2 Provisions Severable

If any part of this Ordinance shall be held unconstitutional or invalid, this does not affect the validity of the remaining parts of this Ordinance. The Commission declares it would have passed the remaining parts of this Ordinance without the unenforceable provisions.

8.3 Preemption

Nothing in this Ordinance shall be interpreted or applied to create any power, duty or effect in conflict with federal or state law or the federal grant assurances, including but not limited to 49 CFR Parts 23 and 26.

8.4 Time Periods

The time periods set forth in this Ordinance shall be based on calendar days unless otherwise specified.

8.5 No Assumption of Liability

In undertaking the adoption and enforcement of this Ordinance, MAC is undertaking only to preserve and protect safety, health, and general welfare. MAC is not assuming liability, nor is it imposing on its officers and Employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Ordinance does not create a legally enforceable right against MAC.

8.6 Notice Provided by MAC

Notice, including determinations of violations, as required by this Ordinance to be given to an Employee or Employer, is sufficient if delivered in person or sent by U.S. mail to the last address on file with MAC. Time of "issuance" means when the notice is hand delivered or placed in the mail.

8.7 Notice of Other Sources of Law

The following laws, as amended and until repealed, apply at the Minneapolis-St. Paul International Airport:

- a. Minnesota Fair Labor Standards Act. Minnesota Statutes Sections 177.21-177.35.
- b. Minnesota Payment of Wages Law. Minnesota Statutes Sections 181.01-181-1721.
- c. Minnesota Equal Pay for Equal Work Law. Minnesota Statutes Sections 181.66-181.71.
- d. Minnesota Theft and Related Crimes Law, Wage Theft. Minnesota Statutes Section 609.52.

Nothing in this section shall be construed to expand or limit the application of any law.

8.8 Effective Dates

This Ordinance is effective December 1, 2020.