

### 3.XX WAGE AND TIP THEFT

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#### PENALTIES FOR VIOLATION OF THE WAGE AND TIP THEFT BYLAW

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**Noncriminal Disposition for first violation:** warning notice to the Employer which will specify the violation and the appropriate penalties in the event of future violations. (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

**Noncriminal Disposition for second, and subsequent violations:** \$300 per violation (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

**See Section G.4 for non-monetary penalties**

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#### A. Purpose

The purpose of this Bylaw is to ensure that Employers operating in the Town of Amherst comply with state and federal wage and tip laws and to require Employers to notify Employees in writing of their rights.

#### B. Definitions

1. "Administrative Citation" means a civil citation issued by the attorney general pursuant to M.G.L. Ch. 149 Sec. 27C, a civil citation issued by the Department of Labor pursuant to 29 U.S.C. Sec. 201 et seq. and/or 29 C.F.R. Sec. 578, any other civil citation for violation of M.G.L. Ch. 149 or c. 151 and/or 29 U.S.C. Sec. 201 et seq. issued by any other federal, state, or local administrative agency, or penalties, fines, or findings of violations of Amherst's Wage and Tip Theft, Responsible Employer, or Tax Relief Bylaws.
2. "Adverse Action" means denying a job or promotion; demoting, terminating, or failing to rehire after a seasonal interruption of work; threatening, penalizing, retaliating, or engaging in unfair immigration practices; filing a false report with a government agency; changing an Employee's status to a non-Employee; or otherwise discriminating against any person for any reason prohibited by this Bylaw. "Adverse Action" for an Employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and conditions of employment.
3. "Compensation" means payment owed to an Employee by reason of employment including, but not limited to, salaries, wages, Tips, overtime, commissions, Piece Rate, bonuses, rest breaks, promised or legislated paid leave, and reimbursement for Employer expenses. For reimbursement of Employer expenses, and Employer shall indemnify the Employee for all necessary expenditures or losses incurred by the Employee in direct consequence of the discharge of the Employee's duties, or of the Employee's obedience to the directions of the Employer, even though unlawful, unless the Employee, at the time of obeying the directions, believed them to be unlawful.
4. "Employ" means to suffer or permit to work.
5. "Employee" means any individual who performs services for and under the control and direction of an Employer for wages or other remuneration, including but not limited to full-time Employees, part-time Employees, and temporary workers. An Employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged Employer.
6. "Employer" means any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work:

1. in the Town of Amherst;
  2. under a contract to which the Town of Amherst or one of its Departments is signatory;
  3. under an agreement with the Town for tax relief; or
  4. who otherwise maintains a commercial presence in the Town of Amherst.
7. "Front Pay" means the Compensation the Employee would earn or would have earned if reinstated to the Employee's former position.
  8. "Pay Day" means a specific day or date established by the Employer on which wages are paid for hours worked during a Pay Period.
  9. "Payment Interval" means the amount of time between established Pay Days. A Payment Interval may be daily, weekly, bi-weekly, semi-monthly, or monthly.
  10. "Pay Period" means a defined time frame for which an Employee will receive a paycheck. A Pay Period may be daily, weekly, bi-weekly, semi-monthly, or monthly.
  11. "Piece Rate" means a price paid per unit of work.
  12. "Respondent" means an Employer or person who is alleged or found to have committed a violation of this Bylaw.
  13. "Successor" means any person to whom an Employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the Employer's business, a major part of the property or interest, whether real or personal, tangible or intangible, of the Employer's business. For purposes of this definition, "person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.
  14. "Tip" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the Employee receiving the Tip.
  15. "Town" means the City known as the Town of Amherst.

**C. Town Human Rights Director Requirements and Responsibilities**

1. On a biannual basis, the Town Human Rights Director shall review Wage and Tip Theft complaints filed with the Town or with the Attorney General, of which the Director is aware, and provide advice to the Town Manager on the implementation and effectiveness of the Wage and Tip Theft Bylaw.
2. The Town Human Rights Director shall coordinate any response to complaints filed that is required by the Bylaw or otherwise allowed by law.
3. The Town Human Rights Director may offer referrals to appropriate state agencies to Employees affected by wage and tip theft in Amherst.
4. The Town Human Rights Director, working with the Human Rights Commission, may offer education and guidance to Employees and Employers regarding wage and tip theft in Amherst and elsewhere.
5. The Town Human Rights Director, working with the Human Rights Commission, shall publish an annual report detailing:
  - a. The number of wage and tip theft complaints received by the Town and the actions taken in response to such complaints, including how many complaints resulted in findings of violations, where available;
  - b. Civil and criminal judgments issued by the state and federal courts, Administrative Citations, and final administrative orders, including but not limited to Debarments, against Employers operating in the Town of Amherst pursuant to M.G.L. Ch. 149 and M.G.L. Ch. 151, if known; and

- c. Any recommendations for revision of the Wage and Tip Theft Bylaw.
6. On a biannual basis, the Town Human Rights Director shall request to meet with the Office of the Attorney General concerning the rate, type, and scope of complaints involving Employers operating in the Town and the role of the Town, including coordination, with respect to issues of wage and tip theft in the Town.

**D. Notice and Posting Requirements**

1. The Town shall create and distribute or otherwise make available to all Employers a Wage and Tip Theft Bylaw Rights Poster giving notice of the rights afforded by federal and state Law, as well as this Bylaw. To the extent possible, the Town shall build on posters in multiple languages that are available from the Attorney General's office.
  - a. The Wage and Tip Theft Bylaw Rights Poster shall give notice of:
    1. The right to be paid all Compensation owed by reason of employment on an established regular Pay Day at no longer than monthly intervals as guaranteed under the terms of this Bylaw;
    2. The right to be protected from retaliation for exercising in good faith the rights protected by this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation;
    3. The right to file a worker's compensation claim; and
    4. The right to file a complaint with the Town or Attorney General or bring a civil action for violation of the requirements of this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation including an Employer's failure to pay all Compensation owed by reason of employment, and an Employer or other person's retaliation against an Employee or other person for engaging in an activity protected by this Bylaw.
  - b. Employers shall display the Wage and Tip Theft Bylaw Rights Poster in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in a conspicuous and accessible place at every workplace or job site where any of their Employees work. If display of the Wage and Tip Theft Bylaw Rights Poster is not feasible, including situations when the Employee works remotely or does not have a regular workplace or job site, Employers shall provide the Wage and Tip Theft Bylaw Rights Poster on an individual basis, in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in physical or electronic format.
2. The Town shall create and distribute or otherwise make available a model Notice of Employment Information, which shall be used by an Employer and shall include but not be limited to the items below.
  - a. An Employer's written or electronic Notice of Employment Information shall include the following items:
    1. Name of Employer and any trade ("doing business as") names used by the Employer;
    2. Physical address of the Employer's main office or principal place of business and, if different, a mailing address;
    3. Telephone number and, if applicable, email address of the Employer;
    4. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate or rates of pay;
    5. Employer's Tip policy, with an explanation of any Tip sharing, pooling, or allocation policies;
    6. Pay basis (e.g. hour, work shift, day, week, commission);
    7. Employee's established Pay Day;

8. A written good faith estimate of the Employee's work schedule including the median number of hours the Employee can expect to work each work week, and whether the Employee will be expected to work on-call shifts; and
- b. Employers shall give written or electronic Notice of Employment Information to Employees in English, Spanish, and any language spoken by at least one-third of Employees at the workplace.
- c. Employers shall give this written or electronic Notice of Employment Information to Employees at time of hire and, for those Employees who work for the Employer as of the effective date of this Bylaw, within 90 days of the effective date of this Bylaw.
- d. Employers shall revise the written or electronic Notice of Employment Information before any change to the employment information contained in the Notice of Employment, or as soon as practicable for retroactive changes to such employment information. For the written or electronic good faith estimate of the Employee's work schedule in Subsection 2.a.8. above, the Employer is required to revise the notice once every year and when there is a significant change to the work schedule due to changes in the Employee's availability or to the Employer's business needs.
- e. Failure to give this written or electronic Notice of Employment Information shall be a violation of this Bylaw and, should a complaint relative to Compensation be filed by an Employee with the Attorney General or other appropriate state or federal agency, the Town shall provide certified copies of any findings of violation to such agency.
3. On each Pay Day, Employers shall give written or electronic notice to each Employee containing the following information:
  - a. All hours worked with regular and overtime hours shown separately;
  - b. All rates of pay whether paid on hourly, salary, commission, Piece Rate or combination thereof, or other basis during the Pay Period. Workers paid on rate other than hourly or salary are entitled to a detailed printed accounting of commissions, Piece Rate or other methods of payment earned during the Pay Period;
  - c. Tip Compensation;
  - d. Pay basis (e.g. hour, shift, day, week, commission);
  - e. Gross wages; and
  - f. Itemized list of all deductions for that Pay Period.

#### **E. Employer records**

1. Each Employer shall maintain payroll records that document each Employee's name, address, date of birth if under 18 years of age, occupation, dates of employment, rate or rates of pay, , time of day and day of the week that each Employee's work week begins, hours worked each day and each work week, total daily or weekly earnings at straight-time rate, total overtime earnings for weeks in which overtime was worked, date of payment and the dates of Pay Period covered, total payment for each Pay Period, total Tips for each Pay Period if applicable, all additions or deductions for each Pay Period and a record of the additions or deductions from pay. Such records shall be retained for a period of 3 years from the date of the applicable Pay Period, or for such longer period required by law.
2. If, following a request from the Town to produce such records, an Employer fails to make the same available, the Town may report the same to the Attorney General and may take whatever additional action as may be necessary and appropriate under this Bylaw.

#### **F. Retaliation Prohibited**

1. In accordance with law, no Employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.
2. In accordance with law, no Employer or any other person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation. Such rights include but are not limited to:
  - a. The right to make inquiries about the rights protected under law relative to wages and hours;
  - b. The right to inform others about their rights under state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
  - c. The right to file a worker's compensation claim;
  - d. The right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
  - e. The right to file an oral or written complaint with the Town for a violation of this Bylaw or with the Attorney General's Office or to bring a civil action for an alleged violation of M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation;
  - f. The right to cooperate with the Town in its investigations of complaints filed under this Bylaw;
  - g. The right to testify in a proceeding under or related to this Bylaw; and
  - h. The right to oppose any policy, practice, or act that is unlawful under M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.
3. No Employer or any other person shall communicate to a person exercising rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation directly or indirectly the willingness to inform a government Employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Employee or a family member of the Employee to a federal, state, or local agency because the Employee has exercised a right under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.
4. Standard of proof. A finding by the Attorney General of retaliation under state or federal law shall be sufficient to show retaliation under this Bylaw.
5. The protections afforded under this Bylaw shall apply to any person who mistakenly but in good faith alleges violations of this Bylaw.

#### **G. Enforcement, Violations, and Penalties**

1. The Board of License Commissioners and the Town Human Rights Director shall be authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this Bylaw or to obtain compliance with this Bylaw.
2. The Town Human Rights Director and the Police Department shall have the power to investigate violations of Section D of this Bylaw, and, to the extent consistent with law, with Section E and F of this Bylaw, pursuant to their own initiative or upon receipt of a report or complaint filed by an Employee or any other person.

3. Filing and Receipt of Complaints:
  - a. Any complaint or other communication about a violation of this Bylaw, if the complainant decides to file with the Town, shall be filed with the Town Human Rights Director. The Town Human Rights Director shall notify the Town of Amherst Procurement Officer, the Board of License Commissioners, Amherst Police Chief, and the Attorney General's Office of the complaint, as appropriate.
  - b. A complaint or other communication to the Human Rights Director about a violation of this Bylaw or state or federal laws regulating the payment of Compensation shall be deemed sufficiently filed, regardless of whether the complaint or communication makes explicit reference to the Bylaw.
  - c. The Town shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. However, with the authorization of such person or when otherwise required by law, the Town may disclose the Employee's or person's name and identifying information as necessary to enforce this Bylaw or for other appropriate purposes.
4. Additional Penalties
  - a. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of a remedy by the Town shall not preclude enforcement through other lawful means.
  - b. The Board of License Commissioners may, after notice and a hearing, deny, revoke, or suspend any license or permit, including renewals and transfers, of any party who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation, should said Board determine that the actions of the party are inconsistent with the terms or conditions of any license or permit.
  - c. The Board of License Commissioners may require any licensee or prospective licensee who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation to provide a wage bond. Wage bonds shall be fixed as follows:
    1. For the first year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 3 times the amount imposed upon the judgment for wage law violation.
    2. For the second year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 2 times the amount imposed upon the judgment for wage law violation.
    3. For the third year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount imposed upon the judgment for wage law violation.
    4. No bond may be required after the third year provided that the licensee is not subject to further judgment for wage law violation. Any new violation shall cause the 3-year clock to reset, and the bond may be imposed as provided in this Subsection C.
  - d. Prospective licensees shall disclose any criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation for wage law violation within the preceding 3 years, and, if so, said prospective licensees may be required to comply with the provisions of Subsection

C, above, based upon the year in which the judgment was imposed, be subject to additional reporting requirements or other conditions to ensure that Employees are properly compensated for their work in accordance with law.

**H. Requirements for Successors-In-Interest**

The requirements of this Bylaw, including any sanctions imposed hereunder, applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (1) has at least 1 of the same principals or officers as the prior Employer; and (2) is engaged in the same or equivalent trade or activity as the prior Employer.

**I. Other legal requirements**

1. This Bylaw defines requirements for Employer notification to Employees performing work within Town limits concerning Compensation and claims with respect thereto and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for more stringent requirements with respect to Compensation obligations. Nothing in this Bylaw shall be interpreted or applied so as to create any power or duty in conflict with federal or state law, and such laws shall supersede any inconsistent provisions set forth herein. This Bylaw shall not be construed to preclude any person aggrieved from seeking judicial review of any final decision or order made under this Bylaw.
2. Each day or portion thereof a violation of this bylaw exists shall constitute a separate offense. If more than 1 provision of this bylaw is violated, each condition violated or Employee aggrieved shall constitute a separate offense.
3. Each provision of this Bylaw shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.