CHAPTER 796

Wage and Tip Compensation Requirements

796.01. Definitions.

(a) As used in this chapter, the term "employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof that employs another person and includes any such entity or person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee; it shall also include any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, but excludes the federal, state and local government and all of their agencies, divisions, and other instrumentalities.

(b) As used in this chapter, any individual performing any service for an employer shall be considered to be an "employee" unless:

(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and

(2) the service is performed outside the usual course of the business of the employer; and,

(3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

(c) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(d) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(e) "Piece-rate" means a price paid per unit of work.

(f) "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 sum.

(g) "Wage" means 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, subject to such deductions, charges, or allowances as may be permitted by rules of the Director of Finance or his designee. Commissions, piece-rate, and bonuses are included in wages.

(Ord. 147-17. Passed 10-3-17.)

796.02. Notice and posting.

(a) Employers shall comply with the notice requirements of this Section 796.02 by providing written information to employees in English, Spanish, and any other language commonly spoken by employees at the particular workplace. Employers may choose a reasonable method for providing this information to employees, including, but not limited to a letter, paystub for the notice required by subsection (c) of this Section 796.02, or an employee-accessible online system.

(b) At time of hire, or within one pay period prior to any change in employment, employers shall provide written notice to employees that contains the following information:

(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 of the employer;

(4) Employee's rate or rates of pay;

(5) Employee's tip policy, including any tip sharing, pooling, or allocation policies, if applicable;

(6) Pay basis (e.g. hour, shift, day, week, commission); and

(7) Employee's established pay day for earned wage and tip compensation.

(c) Each time wages and tips are paid, employers shall provide written notice that contains the following information:

(1) Rate or rates of pay;

(2) Tip compensation (if applicable);

(3) Pay basis (e.g. hour, shift, day, week, commission);

(4) Gross wages; and

(5) All deductions for that pay period.

(d) Employers shall provide written notice to employees that they are entitled to the wage and tip compensation rights defined in this section; that retaliation against persons for their exercise of rights defined in this section is prohibited; and that each employee has the right to file a complaint under this section if the employer fails to comply with the wage and tip compensation rights defined in this section or if the employer takes an adverse employment action against a person in retaliation for engaging in activity protected under this section.

(e) Every employer shall also post the notice as required by subsection 796.02(d) in a conspicuous place at any jobsite or workplace where any employee works. The Division of Taxation of the City of Toledo shall create and make available to employers a poster that contains the information required under this subsection 796.02(e) for their use in compliance. The poster shall be available in English, Spanish, and any other languages that the Division of Taxation determines are needed to notify employees of their rights under this section. The employer shall provide the notice required by this subsection in Spanish, English, and any other language commonly spoken by employees at the particular workplace.

796.03. Payroll records.

For a period of three years, employers shall retain payroll records pertaining to covered employees that document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each pay period, and the hours worked for each employee. Employers shall allow the Division of Taxation of the City of Toledo access to such records, during regular business hours, to investigate potential violations and to monitor compliance with the requirements of this Chapter 796 and Section 545.22 of this Code.

If an issue arises as to an employee's entitlement to wage and tip compensation under this Chapter 796 or Section 545.22 of this Code, if the employer does not maintain or retain adequate payroll records, or does not allow the Division of Taxation reasonable access to such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 796 or Section 545.22 of this Code.

(Ord. 147-17. Passed 10-3-17.)

796.04. Investigation of employee complaints.

(a) Any employee who believes that their employer has violated any provision of this chapter, or of Section 545.22 ("Wage Theft") of this Code, shall have the right to report such alleged violations to the Division of Taxation of the City of Toledo or its designee.

(b) Upon receiving such complaint, the Division of Taxation or its designee shall investigate to determine whether the allegations more likely than not occurred.

(c) In situations where the allegations are determined to be well-founded, the Division of Taxation may request the Director of Law to institute an appropriate civil action for money damages or injunctive relief. The penalties prescribed in Section 796.04(e) shall not preclude the Director of Law from instituting appropriate legal actions or proceedings to prevent such illegal acts from continuing.

(d) Upon a determination that a violation of this chapter has occurred, the Division of Taxation shall notify the Director of Finance and the Office of Contract Compliance of the violation and impose a civil fine.

(e) The fines imposed on violators of Chapter 796, in addition to fines imposed in Section 545.22, for the investigation and prosecution of violations shall be as shown below. If three (3) years occurs between offenses, the violation shall be reduced to the previous fine but shall never be less than a first offense.

(1) First offense: $500

(2) Second offense: $1,000

(3) Third offense: $2,000

(4) Fourth offense: $5,000

(5) Fifth offense and any subsequent offenses: $6,000

(f) The payment of the fines above shall not relieve any employer from their obligations under this or any other section of Toledo Municipal Code.

(Ord. 147-17. Passed 10-3-17.)

796.05. Right of appeal.

An employer may appeal any decision made by the Division of Taxation or its designee under this Chapter to the Board of Appeals created by Section 701.10. The Board shall have the power to sustain, modify or reverse the decision of the Division of Taxation or its designee. The Board's decision shall be in writing and sent to the appellant or his/her legal representative, within fifteen days after the hearing is concluded. The action of the Board of Appeals is final. A quorum of the Board shall consist of a majority of the members of the Board.

796.06. Exercise of rights protected; retaliation prohibited.

(a) It shall be a violation for an employer or any other person to interfere with, restrain, deny, or attempt to deny the exercise of any right protected under Chapter 796.

(b) It shall be a violation for an employer to take an adverse employment action, including but not limited to discharging, threatening, harassing, demoting, penalizing, or in any other manner discriminating or retaliating against any person because the person has exercised in good faith the rights protected under Chapter 796. Such rights include but are not limited to the right to make inquiries about the rights protected under Chapter 796; the right to file an oral or written complaint with the Division of Taxation about any employer's alleged violation of Chapter 796; the right to inform an employer, union or similar organization, and/or legal counsel about an employer's alleged violation of Chapter 796; the right to cooperate with the Division of Taxation in its investigations of alleged violations of Chapter 796; the right to oppose any policy, practice, or act that is unlawful under Chapter 796; and the right to inform other employees of their potential rights under Chapter 796.

(c) It shall be a violation for an employer to communicate to a person filing a wage claim, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the person is not lawfully in the United States, report or threaten 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 Chapter 796.

(d) It shall be considered a rebuttable presumption of retaliation if an employer takes an adverse employment action against a person within 90 days after the date of discovering that the person exercised the rights protected in subsections (b) and (c) of this Section 796.06.

(Ord. 147-17. Passed 10-3-17.)

796.07. Severability.

(a) The provisions of Chapter 796 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of Chapter 796, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of Chapter 796, or the validity of its application to other persons or circumstances.

(Ord. 147-17. Passed 10-3-17.)

796.08. Other legal requirements.

(a) Chapter 796 defines wage and tip compensation requirements for employees performing work within City limits of the City of Toledo 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 greater requirements.

(b) Nothing in Chapter 796 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall Chapter 796 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under Chapter 796 affecting such person.

(Ord. 147-17. Passed 10-3-17.)