

# Uniform Deposit Waiver Application Policy

Pursuant to the authority at Massachusetts General Law Chapter 23, section 1, and the Code of Massachusetts Regulations, 454 CMR 27.05(4)(b), the Director of the Department of Labor is authorized to waive the prohibition under the minimum wage regulations that "no deposit shall be required by the employer from any employee for a uniform" purchased by the employer. In order to obtain such a waiver from this prohibition, an employer must submit an Application For Uniform Deposit Waiver on an approved form to the Director of the Department of Labor Standards, at 19 Staniford Street, 2nd Floor, Boston, Massachusetts, 02114.

I. The following standards will be applied by the Director in determining whether a request by an employer for a Uniform Deposit Waiver will be granted:

A. A Uniform Deposit Waiver will be granted only to an employer for "Uniforms," as defined by 454 CMR 27.02, which reads:

All special apparel, including footwear, which is worn by an employee as a condition of employment. It shall be presumed that a uniform worn by an employee of any establishment is worn as a condition of employment if the uniform is of similar design, color, or material, or it forms part of the decorative pattern of the establishment to distinguish a person as an employee of the place of work.

B. A Uniform Deposit Waiver will be granted only to an employer who has demonstrated a need for such waiver. In considering an employer's demonstration of need, the Director shall look to such factors as:

1. The nature of employer's business;
2. The rate of turn-over of employees;
3. The number of uniforms that employer must purchase in any calendar year in relation to the cost to the employer of each such uniform; and
4. The rate of non-returns of uniforms the employer has experienced in the two years preceding application for waiver.

- C. Under a Uniform Deposit waiver granted by the Director, no demand for a uniform deposit from an employee or prospective employee may be made by the employer unless, at the time of such demand, the employer provides the employee with ALL of the following:
1. A copy of the employer's Uniform Deposit and Employee Notice Policy (see Section IIB.), as approved by the Director;
  2. A copy of the Uniform Deposit Waiver granted by the Director to the employer; and
  3. A copy of this policy.
- D. Under a Uniform Deposit Waiver granted by the Director, no uniform deposit may exceed the actual cost of the uniform to the employer. In cases of deposit required for the use of used or any other uniforms other than those which have been newly purchased, no employer will be permitted to charge a deposit fee any greater than fifty percent of the initial purchase price to the employer.
- E. Under a Uniform Deposit Waiver granted by the Director, all funds collected by the employer as deposits for uniforms shall be kept in a separate account and shall be designated as the "employee funds for uniform deposits," and such uniform deposit funds held by the employer shall not be commingled with other funds.
- F. Under a Uniform Deposit Waiver granted by the Director, no deductions from an employer's uniform deposit will be permitted for regular wear and tear due to ordinary use of a returned uniform, nor may any such employer withhold a uniform deposit, or any portion thereof, on the grounds that the employee has damaged the uniform.
- G. Under a Uniform Deposit Waiver granted by the Director, all deposits for uniforms must be returned to the employee within three business days of the return of the uniform and no employer may withhold a uniform deposit unless an employee fails to return his/her uniform within three business days of leaving employment.

II. To obtain a Uniform Deposit Waiver, the applicant must provide the following information in writing:

A. A completed Application For Uniform Deposit Waiver, which includes:

1. A full description of the uniform, including each article of clothing included therein;
2. A list of the prices paid by the employer for each article of clothing listed in IIA.1., above;
3. The cost per article of clothing to be charged to the employee as a deposit;
4. A complete listing of all applications for Uniform Deposit Waiver made by the employer in the past, including the dates each such application was made and indications as to whether each such application was granted or denied. If granted, the effective dates of each such waiver; if denied, the reasons given for each such denial of a waiver.
5. An affirmation, signed by the employer, that all uniform deposits will be kept in an account in the employer's accounting system, separate and apart from all other accounts. (This statement, and all other statements signed by the employer as part of employer's *Application For Uniform Deposit Waiver*, must be signed under the pains and penalties of perjury by the employer, or by an authorized representative of the employer.)

B. A copy of the Uniform Deposit and Employee Notice Policy, prepared by the employer, which shall be used by the employer to record all deposits received and to provide each employee with a receipt of his/her deposit. The Policy shall contain, at a minimum, the following information:

1. A list of the articles of clothing provided to the employee, and the number of each such article for which a deposit will be received, and an indication of whether each such item is new or used;
2. The cost to the employer of each article of clothing provided to the employee, the deposit amount requested for each such article, and the total dollar amount demanded as a uniform deposit;

3. The method(s) of payment of the deposit that will be acceptable to the employer (e.g., cash, check, credit card, payroll deduction for a specified period of time, etc.).

4. Notice to the employee that payroll deductions for all or part of a uniform deposit may never reduce an employee's wage below the Massachusetts minimum wage, \$11.00 per hour (effective 01/01/17).

For example, if an employee's regular rate of pay is \$11.50 per hour and the employee works a 40-hour workweek, the employer may deduct a maximum of \$20.00 in that week ( $\$0.50 \times 40$ ) for items such as a uniform deposit.

5. Notice to the employee that an employee's regular hourly rate, for purposes of overtime calculation, must be determined before deductions are taken for all or part of a uniform deposit.

For example, if an employee's regular rate of pay is \$11.50 per hour and the employer deducts \$20 for a uniform deposit in a given workweek (effectively reducing that hourly rate to \$11.00 per hour), the employee must still be paid an overtime rate of \$17.25 per hour for any hour worked in excess of 40 in that workweek.

6. Notice to the employee that no uniform deposit may exceed the actual cost of the uniform to the employer, and no deposit for used articles of clothing may be greater than fifty percent of the initial purchase price to the employer;

7. Notice to the employee that no deductions from an employer's uniform deposit will be taken for regular wear and tear due to ordinary use of the uniform, nor will the employer withhold a uniform deposit, or any portion thereof, on the ground that the employee has damaged the uniform;

8. Notice to the employee that any deposit received by the employer for a uniform will be returned to the employee within three business days of the return of the uniform, and that the employer will not withhold the uniform deposit unless the employee fails to return his/her uniform within three days of leaving employment. If an employee fails to return his/her uniform, or any portion thereof, within three business days of leaving employment, the deposit for any article not returned will be deemed forfeited;

9. Notice to the employee that any deposit collected will be kept in the employer's accounting system, separate and apart from other funds;

10. Spaces for the employee to sign and date the Uniform Deposit and Employee Notice Policy, and spaces for a parent or guardian to sign and date the Policy if the employee is less than eighteen years of age.

Once granted, a waiver may be rescinded for failure to comply with any of the above stated policies of the Director. Noncompliance with the provisions of this Uniform Deposit Waiver Policy shall be deemed a violation of 454 CMR 27.05(4)(b). Complaints regarding noncompliance with any of the provisions of this Uniform Deposit Waiver Policy may be filed with the Office of the Attorney General, Fair Labor Division at 617-727-2200.

Michael Flanagan, Director  
Department of Labor Standards