

WAGE THEFT/WAGE JUSTICE PROPOSED AMHERST BYLAWS: RESPONSIBLE EMPLOYER AND WAGE/TIP THEFT

Frequently Asked Questions

What is Wage Theft?

Wage theft occurs when workers are NOT being paid according to state and federal wage and hour laws. Low-wage workers in construction, service and hospitality are particularly vulnerable. Violations include when workers are:

- Paid less than minimum wage
- Not compensated fairly for overtime
- Not paid tips as earned
- Paid cash wages
- Not provided workers compensation from workplace injuries
- Misclassified as independent contractors to avoid minimum wage, health benefits, overtime and other employee benefits and payroll taxes

The State Attorney General polices Wage, Hours, and Other Workplace Laws. Why is Amherst action needed?

The goal of the Amherst bylaws is to ensure that public funds and licenses go to employers that comply with laws and not to companies with a history of abuse. The bylaws would strengthen the economic health of the Town by promoting wage justice and fair competition. Employers that play by the rules would be protected and assured that they will not face unfair competition by companies with a history or practices violating workplace laws.

The Attorney General's office doesn't have enough investigators to adequately stop the problems. When testifying in Lynn on March 27, 2019 in favor of local bylaws addressing wage theft issues, the Chief of the Attorney General's Fair Labor Division stated: "We welcome your partnership." "We can't do it alone."

By adding potential penalties and oversight by Amherst through the Town's procurement and Board of License authority, the bylaws would help prevent violations in addition to imposing costs in addition to State penalties in the event of violations.

What would the proposed Amherst bylaws do?

Employers with a past history or with current violations seeking Amherst public construction funds, tax relief awards or licenses would face financial and other penalties. The bylaws would:

- Require contractors seeking public funds for construction or financial awards, including Tax Incentives to private developers, to certify they have not been cited for wage theft violations for the past 5 years. Those with a recent history would be barred from contracts.
- Include written agreement to comply with laws in procurement contracts.

- Impose financial penalties for violation of State, Federal laws or Amherst bylaws by contractors, subcontractors or successor contractors or licensees that range from per event penalties to partial to full loss of the contract, tax incentives, or licenses.
- Require employers to post workers' rights at the workplace and agree not to retaliate against employee registering a complaint or violation
- Prohibit retaliation against workers that attempt to exercise their protected rights. The bylaws would impose criminal fines for retaliation.
- Authorize the Board of License Commissioners to require wage bonds of prospective licensees with wage law violations in the past 3 years
- Withdraw licenses or require a corrective wage bond for wage or tip violations, with a focus on the hospitality and service sector
- Provide a path to report a complaint or violation to the Town Manager and Human Rights Director in addition to contacting the Attorney General's office
- Set targets for workforce diversity for construction and tax incentive contract awards
- Authorizing the Amherst Human Rights Director, working with the Human Rights Commission, to meet twice a year with the Office of Attorney General
- Require an annual report detailing complaints, actions taken by Amherst, and any civil or criminal judgments issued by state or federal courts or Administrative citations

If workers/employees believe their rights under State, Federal laws or Amherst Bylaws have been violated, what should they do?

In addition to filing complaints directly with the Attorney General, workers would be able to file complaints with the Amherst Human Rights Director or other Town staff and seek guidance from the Human Rights Director and Human Rights Commission regarding their rights and how to report. Upon receiving a complaint, the Town will notify procurement staff, the Amherst Board of Licensure and the Attorney General. The bylaw provides the Town with the power to investigate violations upon receipt of a complaint.

The responsible employer bylaw for public construction contracts and tax Incentives specify targets for workforce diversity. What is the source of these targets?

The targets for minorities and women come from the Executive Order 526 that Governor Patrick signed in 2011 regarding construction diversity. The targets have been incorporated as Administrative Bulletin 14 entitled The Commonwealth of Massachusetts, Supplemental Equal Employment, Non-Discrimination and Affirmation Action Program for projects that receive state support, including buildings at UMass and the Mass Gaming Commission (MGC). There are no statewide Veteran goals. However, the MGC's projects and many cities have set Veteran goals. For example, Springfield, Easthampton, and Worcester have included a 5% Veteran's goal for their construction work.

How will the public be informed regarding wage theft as a result of these Bylaws? Will there be a public report?

There will be an annual public report, published by Amherst compiled under the direction of the Human Rights Director and Human Rights Commission.

3.XX – RESPONSIBLE EMPLOYER: PUBLIC CONSTRUCTION CONTRACTS AND AGREEMENTS FOR TAX RELIEF

A. Purpose

The purpose of this Bylaw is to ensure that the Town of Amherst awards contracts for goods and services and public construction and grants tax relief agreements only to responsible contractors and sponsors who certify their compliance with wage and hour laws and to provide a means of enforcement through appropriate sanctions.

B. Definitions

1. "Amherst Resident" means any person domiciled in Amherst, in accordance with Charter Sec. 1.7.
2. "Contractor" means:
 - a. any bidder or proposer;
 - b. any person that has furnished or seeks to furnish supplies or services under a contract with a public agency or with a person under a contract with a public agency.
 - c. construction manager;
 - d. general contractor, other lead or prime contractor, or any entity functioning in any such general contractor capacity;
 - e. Subcontractor, as defined by this Bylaw.
3. "Sponsor" means the recipient of Tax Relief.
4. "Subcontractor" means:
 - a. any person who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than a subcontractor.
 - b. Trade contractor;
 - c. a subcontractor not subject to M.G.L. Ch. 149 Sec. 44F, and any other contractor, subcontractor of any tier, or other person that is engaged to perform construction work under the bidder or contractor for projects subject to M.G.L. Ch. 149 Sec. 44A(2) or M.G.L. Ch. 30 Sec.39M proposers or contractor under M.G.L. Ch. 149A.
5. "Person of Color" means:
 - a. African-American - All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
 - b. Hispanic - All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.
 - c. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands;
 - d. Indigenous, American Indian or Native American - All persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization; or
 - e. Eskimo or Aleut - All persons having origins in the original peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
6. "Tax Relief" means any form of tax relief granted by the Town under a Tax Incentive Financing ("TIF") Agreement or pursuant to any other provision of law or regulation authorizing the Town to grant tax relief.
7. "Veteran" means a person who has served in any branch of the United States Armed Forces and was not dishonorably discharged.

C. **Municipal Construction Contracts**

1. Whenever the Town of Amherst is procuring construction services subject to the provisions of M.G.L. Ch. 44B, 149, Ch. 149A, or Ch. 30 Sec. 39M, the following shall be incorporated into the procurement documents and shall be made part of the specifications and contract. Any person, company, or corporation shall acknowledge, in writing, receipt of the requirements and obligations set forth in this Bylaw with their bid or proposal.
2. As a condition for bidding or subcontracting or at the time of acceptance of funds under M.G.L. Ch. 44B, all Contractors shall verify under oath and in writing at the time of bidding, submittal in response to an RFP, or prior to entering into a contract or subcontract at any tier that they comply with the following conditions for bidding or subcontracting, and, for the duration of the project, shall comply with the following obligations:
 - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years.
 - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws.
 - c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage included with the Contractor's submitted bid, application process, or prior to commencing any work, to be maintained as a public record.
 - d. The Contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification).
 - e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages.
 - f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority.
 - g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties.
 - h. The Contractor shall provide, at a minimum, employment in the amount of 15.3% of the Contractor's hours worked on the project to people of color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, the Contractor shall submit documentation to the Town detailing efforts to meet these requirements.
 - i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing workforce hiring commitments **in Sections C.2.g and C.2.h above.**

- j. The Contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a weekly basis with the certified payrolls and shall be a public record.
 - k. The Contractor shall submit weekly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.
3. A proposal or bid submitted by any Contractor that does not comply with the requirements and obligations set forth in **Section C.2** of this Bylaw for bidding shall be rejected.
 4. No subcontract for work outside the scope of M.G.L. Ch. 149 Sec. 44F shall be awarded to a Subcontractor that does not comply with the requirements and obligations set forth in **Section C.2** of this Bylaw.
 5. All Contractors who obtain contracts on projects subject to M.G.L. Ch. 149 Sec. 44A(2), Ch. 149A, or Ch. 30 Sec. 39M shall comply with each of the requirements and obligations set forth in this Bylaw for the entire duration of their work on the project, and an officer of each separate Contractor shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
 6. Any Contractor that fails to comply with any one of obligations set forth in this Bylaw for any period of time shall, at the sole discretion of the Town, be subject to 1 or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the Town in the amount of 5% of the dollar value of the contract.
 7. In addition to the sanctions outlined in **Section C.6** above, a Contractor shall be equally liable for the violations of its Subcontractors except for violations arising from work performed pursuant to subcontracts that are subject to M.G.L. Ch. 149 Sec. 44F. Any Contractor or Subcontractor that has been determined by the Town or by any court or agency to have violated any of the obligations set forth in this Bylaw shall be barred from performing any work on any future projects for 6 months for a first violation, 3 years for a second violation, and permanently for a third violation.

D. Requirements for The Grant of Tax Relief

1. In addition to any other conditions that may be required in connection with Tax Relief granted by the Town, each Agreement entered into between the Town and the Sponsor shall be subject to and shall include the definitions set forth in **Section B.** and the mandatory conditions set forth in **Sections D.2., D.3., and E. below.**
2. It shall be a special and material condition of this Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement (hereinafter, collectively and individually, the "Contractor") on the property that is the subject of the Agreement shall

comply with the following qualifications and conditions at all times during their performance of work on the property:

- a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years;
- b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;
- c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage to the Town with the Contractor's submitted bid, application, or prior to commencing any work, to be maintained as a public record;
- d. The Contractor shall properly classify employees as employees rather than independent contractors using applicable federal and state law and shall treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification);
- e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages;
- f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;
- g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties.
- h. The Contractor shall provide, at a minimum, employment in the amount of 15.3% of the Contractor's hours worked on the project to people of color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, the Contractor shall submit documentation to the Town detailing efforts to meet these requirements. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing compliance with these requirements;
- i. The Contractor shall make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a monthly basis with the certified payrolls and shall be a public record;
- j. The Contractor shall submit monthly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, People

of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears;

- k. The Sponsor shall provide the Town with a list of all the expected Contractors to work on the project prior to the start of any work on the property subject to the Agreements. The list shall include the name of the primary contact of each Contractor, the Contractor's address, and the Contractor's phone number or email address. The signatory to the Agreement shall provide an updated list within 14 days of any additional or replacement Contractors performing work on the project and a final all-inclusive list to the Town within 30 days of the conclusion of the project;
3. When seeking Tax Relief granted by the Town, the Sponsor shall certify as part of the request or application process that any Contractor or Subcontractor previously determined by the Town or by any court or agency to have violated any of the requirements set forth in Sections C., D.2., and E. of this Bylaw for the previous 5 years shall not be hired to perform work on the project.

E. Noncompliance and Complaints – Grant of Tax Relief

1. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of the foregoing qualifications and conditions with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any certification by the state was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice by the Town to the Sponsor, and the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement. Where required, the Town shall petition the appropriate state agency or body for revocation of the certification or approval of the grant of Tax Relief and, upon notice of revocation, the tax relief provided by this Agreement shall be terminated, and the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement.
2. In the event the Sponsor challenges the Town's efforts to invoke the forfeiture/clawback provisions of this Agreement or to obtain revocation by the state, or challenges any decision to revoke any certification or approval of the grant of Tax Relief by the state, the Sponsor shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under the Agreement while any such challenge remains pending. The Sponsor shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The Sponsor shall promptly provide to the Town documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the Sponsor is unsuccessful in its challenge, the funds in the account shall be paid to the Town. The Sponsor's obligations under this subsection shall be judicially enforceable. It is the intent of the parties to this Agreement that Amherst Residents are third party beneficiaries of this Agreement, and that it may be enforced in a civil proceeding brought by not less than 10 taxable inhabitants.

F. Requirements for Successors-In-Interest

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

3.XX Wage and Tip Theft

PENALTIES FOR VIOLATION OF THE WAGE AND TIP THEFT BYLAW

Criminal Enforcement for Violation of Section F (Retaliation): \$1,000.00 fine per Aggrieved Party

Criminal Enforcement for all other Violations (Sections D(1)(b); D(2)(b)-(d); D(3)-(4), and D): \$500.00 fine per Aggrieved Party

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 or Human Rights Director)

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

See **Section G(5)** for non-monetary penalties

A. Purpose

The purpose of this Bylaw is to ensure that Employers operating in the Town of Amherst comply with wage and tip laws and 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. "Aggrieved Party" means an Employee or other person who suffers tangible or intangible harm due to an Employer or other person's violation of this Bylaw.
4. "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.
5. "Employ" means to suffer or permit to work.
6. "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.

7. "Employer" means any individual, partnership, association, corporation, business trust, or an entity or person acting directly or indirectly in the interest of an Employer in relation to an Employee. More than one entity may be the "Employer" if employment by one Employer is not completely disassociated from employment by the other Employer.
8. "Front Pay" means the Compensation the Employee would earn or would have earned if reinstated to the Employee's former position.
9. "Pay Day" means a specific day or date established by the Employer on which wages are paid for hours worked during a Pay Period.
10. "Payment Interval" means the amount of time between established Pay Days. A Payment Interval may be daily, weekly, bi-weekly, semi-monthly, or monthly.
11. "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.
12. "Piece Rate" means a price paid per unit of work.
13. "Respondent" means an Employer or person who is alleged or found to have committed a violation of this Bylaw.
14. "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.
15. "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.
16. "Town" means the City known as the Town of Amherst.

C. Town Human Rights Director Requirements and Responsibilities

1. At least quarterly, the Town Human Rights Director shall review Wage and Tip Theft complaints 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 such complaint that is required by the Bylaw.
3. The Town Human Rights Director, working with the Human Rights Commission, may offer education, guidance, and referrals to Employees affected by wage and tip theft in Amherst.
4. 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, 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 the Wage and Tip Theft Bylaw.

5. On a biannual basis, the Town Human Rights Director and Chair of the Human Rights Commission shall request to meet with the Office of the Attorney General to discuss complaints involving Employers operating in the Town and to better coordinate on issues of wage and tip theft in the Town.

D. Notice and Posting Requirements

1. The Town shall create and distribute a Wage and Tip Theft Bylaw Rights Poster giving notice of the rights afforded by this Bylaw in English, Spanish, and any other languages that are necessary for Employers to comply with the Bylaw.
 - 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 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 and in the primary language of the Employee(s) at the workplace in a conspicuous and accessible place at any 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 may provide the Wage and Tip Theft Bylaw Rights Poster on an individual basis in an Employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.
2. The Town shall create and distribute a model Notice of Employment Information in English, Spanish and other languages that are necessary for Employers to comply with Subsections b-d below.
 - a. The written 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 notice of employment information to Employees in English and in the primary language(s) of the Employee(s) receiving the written information.
 - c. Employers shall give this written 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 Notice of Employment Information before any change to such employment information, or as soon as practicable for retroactive changes to such employment information, pursuant to regulations issued by the Town. For the written 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. If an Employer fails to give this written Notice of Employment Information, the failure shall constitute evidence weighing against the credibility of the Employer's testimony regarding the agreed-upon rate of pay.
3. On each Pay Day, Employers shall give written 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.
 4. An Employer must post or otherwise notify its Employees that a complaint has been brought to the Town, using a form provided by the Town and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language spoken by the Employee(s) at the particular workplace. If the display of the form is not feasible, including situations when the Employee works remotely or does not have a regular workplace, Employers may provide the form on an individual basis in physical or electronic format that is reasonably conspicuous and accessible.

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.
2. If an Employer fails to maintain or retain adequate records required under this Bylaw, there shall be a presumption, rebuttable by clear and convincing evidence, that the Employer violated this Bylaw for the periods and for each Employee for whom records were not maintained or retained.

3. Respondents in any case closed by the Town shall allow the Town access to such records to permit the Town to evaluate the Town's enforcement efforts. Before requesting records from such a Respondent, the Town shall first consult the Town's Respondent records on file and determine if additional records are necessary.

F. Retaliation Prohibited

1. 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. 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 this Bylaw;
 - b. The right to inform others about their 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 this Bylaw;
 - e. The right to file an oral or written complaint with the Attorney General's Office or Town or bring a civil action for an alleged violation 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;
 - f. The right to cooperate with the Town in its investigations of this Bylaw;
 - g. The right to testify in a proceeding under or related to this Bylaw;
 - h. The right to refuse to participate in an activity that would result in a violation of Town, state or federal law; and
 - i. The right to oppose any policy, practice, or act that is unlawful 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.
3. No Employer or any other person shall communicate to a person exercising rights protected under this Bylaw 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.
4. It shall be considered a rebuttable presumption of retaliation if an Employer or any other person takes an Adverse Action against a person within 90 days of the person's exercise of rights protected in 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. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the Employer fails to rehire a former Employee at the next opportunity for work in the same position. The Employer may rebut the presumption with clear and convincing evidence that the Adverse Action was taken for a permissible purpose.
5. Standard of proof. Proof of retaliation under this Bylaw shall be sufficient upon a showing that an Employer or any other person has taken an Adverse Action against a person and the person's exercise of rights protected in this Bylaw was a motivating factor in the Adverse Action, unless the Employer can prove that the action would have been taken in the absence of such protected activity.

6. 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 failure of any Respondent or Employer to comply with any requirement imposed under this Bylaw is a violation.
2. 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.
3. The Town shall have the power to investigate violations of this Bylaw, as defined herein, pursuant to their own regulations or upon receipt of a report or complaint filed by an Employee or any other person and shall have such powers and duties in the performance of these functions as are defined in this Bylaw and otherwise necessary and proper in the performance of the same and provided for by law.
4. Filing and Receipt of Complaints:
 - a. Any Town Department upon notification of a wage and tip theft complaint shall forward said complaint immediately to the Town Manager and the Town Human Rights Director. The Town Human Rights Director shall notify the Town of Amherst Procurement Officer, the Board of License Commissioners, and the Attorney General's Office of the complaint.
 - b. A complaint or other communication about a violation of this Bylaw or state or federal laws regulating the payment of Compensation to the Town Manager or their designee triggers the protections of this Bylaw regardless of whether the complaint or communication is in writing or 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, 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.
5. 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 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.
 - 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 that disclose a judgment for wage law violation within the preceding 3 years, may be required to comply with the provisions of subsection c, above, based upon the year in which the judgment was imposed. By way of example: a prospective licensee with a judgment for wage law violation imposed more than 1 year but less than 2 years prior to the application (i.e., in the second year) may be required to obtain a wage bond in the amount of 2 times the amount of the judgment for wage law violation.
- e. Criminal fines and noncriminal disposition penalties are cumulative and each day or portion thereof shall constitute a separate offense. If more than 1, each condition violated or Employee aggrieved shall constitute a separate offense.

H. Other legal requirements

This Bylaw defines requirements for Compensation owed by reason of employment to Employees performing work within Town limits 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. Nothing in this Bylaw shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. This Bylaw shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Bylaw.

I. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any sanctions imposed herein, that are 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.