

## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Lead Agency: **Labor and Industry Dept**  
 Other Agencies:  
     Administrative Hearings      Attorney General  
     Commerce Dept                Employment and Economic Dvlpmnt  
     Revenue Dept

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              | X   |    |
| Fee/Departmental Earnings | X   |    |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings)           | Biennium |        |        | Biennium |         |
|--------------------------------|----------|--------|--------|----------|---------|
| Dollars in Thousands           | FY2023   | FY2024 | FY2025 | FY2026   | FY2027  |
| <b>Administrative Hearings</b> | -        | -      | -      | -        | -       |
| Administrative Hearings        | -        | -      | -      | -        | -       |
| <b>Labor and Industry Dept</b> |          |        |        |          |         |
| General Fund                   | -        | -      | 56     | (642)    | (642)   |
| <b>Revenue Dept</b>            |          |        |        |          |         |
| General Fund                   | -        | -      | 143    | -        | -       |
| <b>State Total</b>             |          |        |        |          |         |
| Administrative Hearings        | -        | -      | -      | -        | -       |
| General Fund                   | -        | -      | 199    | (642)    | (642)   |
| <b>Total</b>                   | -        | -      | 199    | (642)    | (642)   |
| <b>Biennial Total</b>          |          |        | 199    |          | (1,284) |

| Full Time Equivalent Positions (FTE) | Biennium |        |        | Biennium |        |
|--------------------------------------|----------|--------|--------|----------|--------|
|                                      | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Administrative Hearings              | -        | -      | -      | -        | -      |
| Administrative Hearings              | -        | -      | -      | -        | -      |
| <b>Labor and Industry Dept</b>       |          |        |        |          |        |
| General Fund                         | -        | -      | .44    | .44      | .44    |
| <b>Revenue Dept</b>                  |          |        |        |          |        |
| General Fund                         | -        | -      | .71    | -        | -      |
| <b>Total</b>                         | -        | -      | 1.15   | .44      | .44    |

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karl Palm      **Date:** 4/12/2024 3:04:50 PM  
**Phone:** 651-296-6055      **Email:** karl.palm@lbo.mn.gov



**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |  | <b>Biennium</b> |               |               | <b>Biennium</b> |
|--|--|-----------------|---------------|---------------|-----------------|
| <b>Dollars in Thousands</b>                              |  | <b>FY2023</b>   | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b>   |
|  |  |                 |               |               | <b>FY2027</b>   |
| Administrative Hearings                                  |  | -               | -             | -             | -               |
| Administrative Hearings                                  |  | -               | -             | -             | -               |
| Labor and Industry Dept                                  |  |                 |               |               |                 |
| General Fund   |  | -               | -             | 56            | (642)           |
| Revenue Dept   |  |                 |               |               |                 |
| General Fund   |  | -               | -             | 143           | -               |
| <b>Total</b>   |  | -               | -             | <b>199</b>    | <b>(642)</b>    |
| <b>Biennial Total</b>                                    |  |                 |               | <b>199</b>    | <b>(1,284)</b>  |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |  |                 |               |               |                 |
| Administrative Hearings                                  |  | -               | -             | -             | -               |
| Administrative Hearings                                  |  | -               | -             | -             | 15              |
| Labor and Industry Dept                                  |  |                 |               |               |                 |
| General Fund   |  | -               | -             | 56            | 70              |
| Revenue Dept   |  |                 |               |               |                 |
| General Fund   |  | -               | -             | 143           | -               |
| <b>Total</b>   |  | -               | -             | <b>199</b>    | <b>85</b>       |
| <b>Biennial Total</b>                                    |  |                 |               | <b>199</b>    | <b>170</b>      |
| <b>2 - Revenues, Transfers In*</b>                       |  |                 |               |               |                 |
| Administrative Hearings                                  |  | -               | -             | -             | -               |
| Administrative Hearings                                  |  | -               | -             | -             | 15              |
| Labor and Industry Dept                                  |  |                 |               |               |                 |
| General Fund   |  | -               | -             | -             | 712             |
| Revenue Dept   |  |                 |               |               |                 |
| General Fund   |  | -               | -             | -             | -               |
| <b>Total</b>   |  | -               | -             | -             | <b>727</b>      |
| <b>Biennial Total</b>                                    |  |                 |               | -             | <b>1,454</b>    |

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Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Labor and Industry Dept**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              | X   |    |
| Fee/Departmental Earnings | X   |    |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings) |  | Biennium |        |        | Biennium |         |
|----------------------|--|----------|--------|--------|----------|---------|
| Dollars in Thousands |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027  |
| General Fund         |  | -        | -      | 56     | (642)    | (642)   |
| Total                |  | -        | -      | 56     | (642)    | (642)   |
| Biennial Total       |  |          |        | 56     |          | (1,284) |

| Full Time Equivalent Positions (FTE) |  | Biennium |        |        | Biennium |        |
|--------------------------------------|--|----------|--------|--------|----------|--------|
|                                      |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| General Fund                         |  | -        | -      | .44    | .44      | .44    |
| Total                                |  | -        | -      | .44    | .44      | .44    |

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karl Palm      **Date:** 4/12/2024 1:10:40 PM  
**Phone:** 651-296-6055      **Email:** karl.palm@lbo.mn.gov

### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |               | <b>Biennium</b> |               |               | <b>Biennium</b> |
|--|---------------|-----------------|---------------|---------------|-----------------|
| <b>Dollars in Thousands</b>                              | <b>FY2023</b> | <b>FY2024</b>   | <b>FY2025</b> | <b>FY2026</b> | <b>FY2027</b>   |
| General Fund   | -             | -               | 56            | (642)         | (642)           |
| <b>Total</b>   | <b>-</b>      | <b>-</b>        | <b>56</b>     | <b>(642)</b>  | <b>(642)</b>    |
| <b>Biennial Total</b>                                    |               |                 | <b>56</b>     |               | <b>(1,284)</b>  |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |               |                 |               |               |                 |
| General Fund   | -             | -               | 56            | 70            | 70              |
| <b>Total</b>   | <b>-</b>      | <b>-</b>        | <b>56</b>     | <b>70</b>     | <b>70</b>       |
| <b>Biennial Total</b>                                    |               |                 | <b>56</b>     |               | <b>140</b>      |
| <b>2 - Revenues, Transfers In*</b>                       |               |                 |               |               |                 |
| General Fund   | -             | -               | -             | 712           | 712             |
| <b>Total</b>   | <b>-</b>      | <b>-</b>        | <b>-</b>      | <b>712</b>    | <b>712</b>      |
| <b>Biennial Total</b>                                    |               |                 | <b>-</b>      |               | <b>1,424</b>    |

### Bill Description

SF4483 amends chapters 177, 181, and 326B to address misclassification of employees as independent contractors.

Sections 1-5 Clarify investigative and enforcement authority and grant additional investigative and enforcement authority to the commissioner by providing authority to question employers and other persons in addition to employees, granting authority to demand submission of records that relate to employment or employment status, clarifying commissioner authority to determine back wages due to an employee, adding construction worker misclassification to the commissioner's compliance order authority, and clarifying that the penalty for repeat or willful violations is in addition to other available penalties.

Section 6 Adds misclassification of employees as a basis for a private right of action.

Section 7 Outlines the following prohibited activities related to misclassification:

- Failing to classify, represent, or treat an individual as an employee in accordance with the requirements of any applicable local, state, or federal law;

- Failing to report or disclose to any person or to any local, state, or federal government agency an employee when required to do so under any applicable local, state or federal law; and

- Requiring or requesting an employee to enter into any agreement or complete any document that misclassifies, misrepresents, or treats the employee as an independent contractor.

Section 7 also adds additional damages and penalties for violations including compensatory damages, up to a \$10,000 penalty for each misclassified individual, up to a \$10,000 penalty for each prohibited activity, and a penalty of \$1,000 per day per person for obstruction of an investigation.

Section 8 Addresses misclassification of construction employees by modifying the independent contractor test for individuals providing or performing building construction or improvement services and clarifying who is the employer of a misclassified worker when multiple contractors are involved in performing related services; this part of section 8 is effective for contracts entered into on or after August 1, 2024 and for all building construction or improvement services provided or performed on or after January 1, 2025. Section 8 also aligns prohibited activities with those in the prior section and adds the following prohibitions:

-Requiring employees to register; and

-Conditioning payment on an employee registering as a contractor, agreeing to being classified as an independent contractor, or forming a business.

It adds individual liability for certain individuals who engage in any of the prohibited activities and adds successor liability with a test for determining successor status. It also sets damages and penalties as in the prior section.

Sections 9-10 Establish the "Intergovernmental Misclassification Enforcement and Education Partnership." The Partnership includes the commissioners of labor and industry, revenue, employment and economic development, commerce, and the attorney general with a duty to communicate among parties to detect and investigate employee misclassification. The sections set forth nine duties for the Partnership to accomplish related to employee misclassification. The sections provide that the Partnership shall meet quarterly through July 31, 2025, present annually to the legislature on its efforts beginning with its first presentation by March 1, 2025 and thereafter at the request of the chairs of the labor committees through July 31, 2025. The Partnership is subject to open meeting laws except while discussing data classified as not public under section 13.02, subd. 8a. The sections also require the commissioner of labor and industry to maintain website information about the Partnership, including complaint filing, and require the other entities to maintain general information on their websites related to misclassification laws.

Sections 16-24 Amend the commissioner's investigative and enforcement authority related to construction licensing and registration. The sections clarify the commissioner may demand information and data broadly and take additional identified investigative actions. The sections allow notices of violation to be issued against certain individuals who engage in prohibited activities and allow for successor liability. They add authority to assess damages in administrative orders, issue administrative orders for failure to correct notices of violations, issue administrative orders against certain individuals who engage in prohibited activities and allow for successor liability. The sections allow the commissioner to order cessation of business activities for certain legal violations or failure to comply with orders of the commissioner and assess daily penalties of \$5,000 for violation of stop work orders. The amendments establish that stop work orders may be issued to certain individuals and are effective against successor persons. They also establish a right to up to ten days of average daily earnings for employees affected by stop work orders. Stop work orders are classified as public data. These changes to stop work orders are effective for contracts entered into on or after August 1, 2024 and for all building construction or improvement services provided or performed on or after January 1, 2025. The sections clarify and expand unlawful conduct that can result in a licensing order and establish that licensing orders may be issued to certain individuals and are effective against successor persons. The amendments clarify the conditions that may be imposed as a condition of reapplication. The amendments also add the authority for the commissioner to assess daily penalties of \$1,000 for obstruction of investigations.

Section 25 Amends construction contractor registration. This section clarifies the applicability of the registration requirement by making clear any provider of services is covered, not only those performing construction services. It modifies information and documentation needed for registration. It clarifies the department's website must accept renewal applications in addition to initial applications and updates the information available on the department's website related to construction contractors. This section adds the prohibition of requiring employees to register as contractors and clarifies what is not a violation. This section makes each day a person is unregistered when required to be registered a separate violation. This section adds chapter 177 to existing investigative and enforcement authority. It removes the requirement that penalties for failure to register must be forgiven if the violation is corrected within 30 days and also removes the requirement that penalties for first violations of contracting with or paying an unregistered person be forgiven. It allows the commissioner to use data submitted for investigations and enforcement purposes and expands data sharing with other departments, including which departments data may be shared with and the purposes for which it may be shared.

### **Assumptions**

In 2023, DLI received approximately 99 inquiries involving misclassification. Separating these inquiries by those related to construction and those related to other industries, 23 inquiries were related to construction and 76 were related to other industries. Of the construction-related misclassification inquiries, two resulted in wage claims, one resulted in the "inform and educate" process, and four were pursued as investigations; the remaining inquiries were addressed by answering questions and providing information. Of the misclassification inquiries unrelated to construction, 10 resulted in wage claims, two resulted in the "inform and educate" process, and two were pursued as investigations; the remaining inquiries were addressed by answering questions and providing information.

DLI assumes that in response to this bill it would continue to answer questions and provide information, conduct wage claims, use the “inform and educate” process, and perform investigations in response to misclassification inquiries; however, this bill would impact the manner in which DLI performed its misclassification investigative and enforcement work and the potential results of those investigations, as detailed below. DLI also anticipates that due to increased education, engagement, and outreach regarding misclassification to stakeholders, including employers and employees, as a result of this bill and as detailed below, DLI would experience a slight increase in misclassification complaints; accordingly, DLI estimates it would conduct an additional four misclassification investigations each year, two related to construction and two related to other industries. These four investigations, and the remaining six misclassification investigations (approximately six investigations annually, as determined by 2023 DLI inquiry data), would be conducted using the clarified and expanded investigative and enforcement authority conferred to the Department by this bill. DLI would also address misclassification using the expanded and streamlined investigative and enforcement tools provided by this bill in its other wage and hour cases related to wage theft and other working conditions. According to the two most recent OLA reports regarding misclassification, it is anticipated DLI would find misclassification in those investigations between approximately 17% and 22% of the time.

#### Misclassification Investigations

Investigative time varies dependent on the complexity and scope of an investigation and the steps needed to gather necessary evidence for the investigation (e.g., various demands for information and records, worker interviews, subpoenas, on-site inspections). Beginning in FY25, DLI estimates it would spend a total of 840 hours (three investigations at 240 hours each and one investigation at 120 hours) on four additional misclassification investigations on an annual basis as a result of this bill.

Misclassification investigations are often resource-intensive and typically require demanding information and records from employers and interviewing numerous workers and other witnesses to thoroughly gather the facts and other evidence necessary to determine whether an employer has misclassified some or all of its workforce. Furthermore, DLI anticipates that it will focus much of its investigative and enforcement activity on larger misclassification investigations that have the potential to have a broad impact on industry behavior. As such, DLI assumes these additional investigations will usually take 240 hours of investigative time except in limited circumstances, such as when the employer investigated has a smaller workforce.

#### Outreach

DLI estimates it would need approximately 75 hours each year starting in FY25 to prepare and disseminate outreach and educational materials to reflect the requirements of this bill, as well as to engage with employees and employers, especially those most impacted by the requirements in this bill (e.g., the construction industry, as well as other industries where misclassification is prevalent).

In total, this bill would result in an additional 915 hours (0.44 FTE) of DLI staff (Labor Investigators Sr. MAPE 12L)

#### Misclassification-Related Penalties

This bill adds additional damages and penalties, including compensatory damages, a penalty for each misclassified individual up to \$10,000, a penalty of up to \$10,000 for each prohibited activity, and a \$1,000 per day per person penalty for obstruction of an investigation.

While compensatory damages would be awarded to misclassified workers, additional penalties would be provided to the state. DLI anticipates increased penalties to the state as a result of this bill, starting in fiscal year 2026 after DLI has conducted outreach and education related to this bill and investigations initiated after the effective date of the bill are complete.

As indicated above, DLI anticipates it will conduct approximately 10 total misclassification investigations each year as a result of this bill; six of these investigations will relate to construction misclassification and the remaining four investigations will relate to misclassification in other industries.

For the four non-construction misclassification investigations, the following potential violations and corresponding available penalties would apply:

- (1) Standalone misclassification penalty (up to \$10,000 penalty for each misclassified individual);
- (2) Failing to classify, represent, or treat an individual as an employee in accordance with the requirements of any applicable local, state, or federal law (up to \$10,000 penalty for each violation);
- (3) Failing to report or disclose to any person or to any local, state, or federal government agency an employee when required to do so under any applicable local, state or federal law (up to \$10,000 penalty for each violation);
- (4) Requiring or requesting an employee to enter into any agreement or complete any document that misclassifies, misrepresents, or treats the employee as an independent contractor (up to \$10,000 penalty for each violation); and
- (5) Obstructing an investigation (\$1,000 penalty per day per person)

The same potential violations and corresponding available penalties would apply to the six construction misclassification investigations, as well as the following:

- (6) Conditioning payment on an employee registering as a contractor, agreeing to being classified as an independent contractor, or forming a business (up to \$10,000 penalty for each violation); and
- (7) Requiring an employee to register (up to \$10,000 penalty for each violation)

In determining the amount of a penalty assessed, the commissioner considers the factors in Minn. Stat. 14.045, subd. 3, including whether the violations were willful; the gravity of the violations; the number of violations; whether there is a history of past violations; whether the subject(s) of the investigation gained economic benefit in not complying with the law; and other factors as justice may require.

Here, DLI estimates approximately \$612,000 in misclassification-related penalties starting in fiscal year 2026. DLI arrives at this estimate based on the following (see number above for corresponding violation).

- (1) \$225,000 (\$5,000 x 40 misclassified individuals; \$2,500 x 10 misclassified individuals)
- (2) \$125,000 (\$2,500 x 50 violations/impacted employees)
- (3) \$125,000 (\$2,500 x 50 violations/impacted employees)
- (4) \$75,000 (\$7,500 x 10 violations/impacted employees)
- (5) \$7,000 (\$1,000 x 7 days)
- (6) \$30,000 (\$10,000 x 3 violations/impacted employees)
- (7) \$25,000 (\$5,000 x 5 violations/impacted employees)

#### Registration-Related Penalties

DLI anticipates additional registration-related penalties as a result of this bill because it removes required penalty forgiveness as detailed in the bill narrative under section 25.

The following potential violations and corresponding available penalties would apply:

- (1) Providing or performing building construction or improvement services without being registered if required to be registered (up to a \$10,000 penalty per violation per day);
- (2) Requiring an individual who is an employee to register (up to a \$10,000 penalty per violation); and
- (3) Engaging an unregistered person to provide or perform building construction or improvement services if required to be registered (up to a \$10,000 penalty per violation)

DLI received approximately four complaints concerning registration-related violations in 2023 and DLI anticipates that it would continue to conduct four registration-related investigations each year going forward.

In determining the amount of a penalty assessed, the commissioner considers the factors in Minn. Stat. 14.045, subd. 3, including whether the violations were willful; the gravity of the violations; the number of violations; whether there is a history of past violations; whether the subject(s) of the investigation gained economic benefit in not complying with the law; and other factors as justice may require.

Here, DLI estimates approximately \$90,000 in registration-related penalties starting in fiscal year 2026. DLI arrives at this estimate based on the following (see number above for corresponding violation):



- (1) \$70,000 (\$5,000 x 14 days)
- (2) \$10,000 (\$5,000 x 2 violations/impacted employees)
- (3) \$10,000 (\$5,000 x 2 violations/impacted employees)

#### Stop Work Orders

As detailed in the bill description, this bill allows the commissioner to order cessation of business activities for certain legal violations or failure to comply with orders of the commissioner and to assess daily penalties of \$5,000 for violations of stop work orders. Currently DLI has stop order authority, which requires a recipient of a stop order to cease and desist from prohibited activity.

DLI has issued one stop order in the last seven years. As a result of this bill, DLI anticipates it would issue approximately one stop work order each year starting in fiscal year 2026. DLI anticipates the recipient of the stop work order would not cease business activities as required by the order for a period of two days, resulting in a penalty of \$10,000 (\$5,000 x 2 days) each year.

#### Contested Case Hearings

As a result of this bill and DLI's increased investigative and enforcement authority, DLI assumes three additional contested matters would be referred to the Office of Administrative Hearings (OAH) each year starting in fiscal year 2027 and that DLI would be represented by the Office of the Attorney General (OAG) throughout the proceeding. It is assumed that two contested cases will settle without hearing requiring 10 hours each of administrative law judge (ALJ) time, and one case will go to hearing requiring 40 hours at the currently approved billable rate of \$245 per hour, for an estimated total cost of \$14,700.

#### Contractor Registration Application and Renewal

Construction contractor registration renewals and initial registration applications are processed through DLI's iMS licensing and registration database. Minor modifications to the contractor registration application as included in this bill could be incorporated at no cost. Accordingly, there are no projected MNIT costs associated with the processing of registration renewals and initial applications.

#### Partnership

As required by the bill, the DLI commissioner will convene and lead meetings of the Intergovernmental Misclassification Enforcement and Education Partnership at least quarterly. DLI will provide meeting space, the expense for which can be absorbed by the Department's current lease. DLI staff (immaterial other duties assigned) will support these meetings and the partnership in meeting its statutory duties, DLI is responsible for maintaining information on the Partnership on its website. DLI regularly posts information on its website regarding laws within its jurisdiction and how to file complaints. The agency would incorporate the responsibilities for posting information on the Partnership and how to file a complaint related to employee misclassification into these regular duties.

#### **Expenditure and/or Revenue Formula**

| Cumulative Expenditures          | 2024     | 2025          | 2026          | 2027          |
|----------------------------------|----------|---------------|---------------|---------------|
| Labor Investigator Sr (MAPE 12L) | -        | 55,717        | 55,717        | 55,717        |
| OAH                              | -        | -             | 14,700        | 14,700        |
| <b>Total</b>                     | <b>-</b> | <b>55,717</b> | <b>70,417</b> | <b>70,417</b> |

| Combined Penalty Revenue        | 2024 | 2025 | 2026    | 2027    |
|---------------------------------|------|------|---------|---------|
| Misclass Penalty Revenue        |      |      | 612,000 | 612,000 |
| Registration Penalty Revenue    |      |      | 90,000  | 90,000  |
| Stop Work Order Penalty Revenue |      |      | 10,000  | 10,000  |
| Total Revenue                   | -    | -    | 712,000 | 712,000 |

### Long-Term Fiscal Considerations

### Local Fiscal Impact

### References/Sources

<https://www.auditor.leg.state.mn.us/ped/pedrep/missclass.pdf>

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**Agency Fiscal Note Coordinator Signature:** Jacob Gaub

**Phone:** 651-284-5812

**Date:** 4/12/2024 12:59:20 PM

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## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Administrative Hearings**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              | X   |    |
| Fee/Departmental Earnings | X   |    |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings)    | Biennium |        |        | Biennium |        |
|-------------------------|----------|--------|--------|----------|--------|
| Dollars in Thousands    | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Administrative Hearings | -        | -      | -      | -        | -      |
| <b>Total</b>            | -        | -      | -      | -        | -      |
| <b>Biennial Total</b>   |          |        | -      |          | -      |

| Full Time Equivalent Positions (FTE) | Biennium |        |        | Biennium |        |
|--------------------------------------|----------|--------|--------|----------|--------|
|                                      | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Administrative Hearings              | -        | -      | -      | -        | -      |
| <b>Total</b>                         | -        | -      | -      | -        | -      |

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Chloe Burns      **Date:** 4/12/2024 1:04:52 PM  
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### State Cost (Savings) Calculation Details

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\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |   | <b>Biennium</b> |        |        | <b>Biennium</b> |           |
|--|---|-----------------|--------|--------|-----------------|-----------|
| Dollars in Thousands                                     |   | FY2023          | FY2024 | FY2025 | FY2026          | FY2027    |
| Administrative Hearings                                  | - | -               | -      | -      | -               | -         |
| <b>Total</b>   | - | -               | -      | -      | -               | -         |
| <b>Biennial Total</b>                                    |   |                 |        | -      |                 | -         |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |   |                 |        |        |                 |           |
| Administrative Hearings                                  | - | -               | -      |        | 15              | 15        |
| <b>Total</b>   | - | -               | -      |        | <b>15</b>       | <b>15</b> |
| <b>Biennial Total</b>                                    |   |                 |        | -      |                 | <b>30</b> |
| <b>2 - Revenues, Transfers In*</b>                       |   |                 |        |        |                 |           |
| Administrative Hearings                                  | - | -               | -      |        | 15              | 15        |
| <b>Total</b>   | - | -               | -      |        | <b>15</b>       | <b>15</b> |
| <b>Biennial Total</b>                                    |   |                 |        | -      |                 | <b>30</b> |

### Bill Description

SF4483-3E clarifies and expands the Department of Labor and Industry's (DLI) investigative and enforcement authority in relation to the misclassification of employees as independent contractors. It more specifically outlines what acts are prohibited in relation to misclassification of employees. It creates a multi-agency Intergovernmental Misclassification Enforcement and Education Partnership to include DLI, Department of Commerce, Department of Revenue, Department of Employment and Economic Development and the attorney general. It also makes amendments to DLI's authority in relation to investigations and enforcement of construction licensing and construction contractor licensing.

### Assumptions

The Office of Administrative Hearings (OAH) in consultation with Minnesota Management and Budget (MMB) assesses agencies the cost of services rendered to them. All agencies shall include in their budgets provisions for such assessments.

OAH has used DLI's assumption that three additional enforcement matters will be appealed to OAH annually beginning in FY2026 as a result of this bill. It is assumed that one of the three appeals will be vigorously contested and go to hearing, requiring an estimated 40 hours of administrative law judge (ALJ) time. The other two appeals will be settled without the need for hearing, requiring an estimated 10 hours of ALJ time each.

OAH currently bills ALJ time at the MMB-approved billable rate of \$245 per hour (see Minn. Stat. § 16A.126, subd. 1 (2022)).

### Expenditure and/or Revenue Formula

Estimated 40 hours of ALJ time at \$245/hr = \$9,800 for one appeal referred to OAH that goes to hearing.

Estimated 20 hours of ALJ time at \$245/hr = \$4,900 for two appeals referred to OAH that do not require a hearing.

Estimated 3 total appeals per fiscal year: \$9,800 + \$4,900 = \$14,700 per fiscal year starting in FY2026.

### Long-Term Fiscal Considerations

Annual appeals costs would continue into future years.

### Local Fiscal Impact

**References/Sources**

**Agency Contact:** Denise Collins

**Agency Fiscal Note Coordinator Signature:** Denise Collins

**Phone:** 651-3617875

**Date:** 4/4/2024 3:17:05 PM

**Email:** denise.collins@state.mn.us

## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Attorney General**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              |     | X  |
| Fee/Departmental Earnings |     | X  |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings) |  | Biennium |        |        | Biennium |        |
|----------------------|--|----------|--------|--------|----------|--------|
| Dollars in Thousands |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                |  | -        | -      | -      | -        | -      |
| Biennial Total       |  |          |        | -      |          | -      |

| Full Time Equivalent Positions (FTE) |  | Biennium |        |        | Biennium |        |
|--------------------------------------|--|----------|--------|--------|----------|--------|
|                                      |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                                |  | -        | -      | -      | -        | -      |

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Susan Nelson **Date:** 3/27/2024 8:07:52 AM  
**Phone:** 651-296-6054 **Email:** susan.nelson@lbo.mn.gov

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |  | <b>Biennium</b> |               |               | <b>Biennium</b> |               |
|--|--|-----------------|---------------|---------------|-----------------|---------------|
| Dollars in Thousands                                     |  | <b>FY2023</b>   | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b>   | <b>FY2027</b> |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |  |                 |               |               |                 |               |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |
| <b>2 - Revenues, Transfers In*</b>                       |  |                 |               |               |                 |               |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |

**Bill Description**

This bill enhances efforts to combat the misclassification of employees as independent contractors. The portions of the bill that impact the AGO are amendments to Minnesota Statutes chapters 177 and 181. The bill affects the AGO by creating a multi-agency Intergovernmental Misclassification Enforcement and Education Partnership (which includes the AGO), allowing for data sharing related to misclassification investigation and enforcement, clarifying the relevant tests for employee misclassification, providing for additional penalties for employee misclassification, and providing a private right of action for employees who have been misclassified.

**Assumptions**

The Attorney General's Office does not project any defined expenditures, absorbed costs, or revenues from the bill's amendments to Minnesota Statutes chapters 177 and 181. Investigations of alleged employee misclassification or litigation to enforce the law would be pursued by the Office's existing attorneys and investigators in the Office's Wage Theft Unit.

The Attorney General's Office estimates that it will expend/save 0 hours of attorney time and 0 hours of legal assistant (investigator/other staff) time per fiscal year.

**Expenditure and/or Revenue Formula**

n/a

**Long-Term Fiscal Considerations**

n/a

**Local Fiscal Impact**

n/a

**References/Sources**

n/a

**Agency Contact:** Laura Sayles

**Agency Fiscal Note Coordinator Signature:** Laura Capuana  
**Phone:** 651-402-2213

**Date:** 3/26/2024 9:47:19 AM  
**Email:** laura.capuana@ag.state.mn.us



## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Commerce Dept**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              |     | X  |
| Fee/Departmental Earnings |     | X  |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings) |  | Biennium |        |        | Biennium |        |
|----------------------|--|----------|--------|--------|----------|--------|
| Dollars in Thousands |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                |  | -        | -      | -      | -        | -      |
| Biennial Total       |  |          |        | -      |          | -      |

| Full Time Equivalent Positions (FTE) |  | Biennium |        |        | Biennium |        |
|--------------------------------------|--|----------|--------|--------|----------|--------|
|                                      |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                                |  | -        | -      | -      | -        | -      |

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karl Palm      **Date:** 3/30/2024 4:07:51 PM  
**Phone:** 651-296-6055      **Email:** karl.palm@lbo.mn.gov

### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| State Cost (Savings) = 1-2                        |                | Biennium |        |        | Biennium |        |
|---|----------------|----------|--------|--------|----------|--------|
| Dollars in Thousands                              |                | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
|   | Total          | -        | -      | -      | -        | -      |
|   | Biennial Total |          |        | -      |          | -      |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* |                |          |        |        |          |        |
|   | Total          | -        | -      | -      | -        | -      |
|   | Biennial Total |          |        | -      |          | -      |
| 2 - Revenues, Transfers In*                       |                |          |        |        |          |        |
|   | Total          | -        | -      | -      | -        | -      |
|   | Biennial Total |          |        | -      |          | -      |

### Bill Description

This bill relates to revisions to regulations involving worker misclassification. The statute also establishes an Intergovernmental Misclassification Enforcement and Education Partnership that is comprised of DLI, Revenue, DEED, Commerce, and the Attorney General. Together the group is tasked with 1) setting goals to maximize efforts to detect, investigate, and deter employee misclassification; (2) sharing information to facilitate the detection and investigation of employee misclassification; (3) developing a process or procedure that provides a person with relevant information and connects them with relevant partnership entities, regardless of which partnership entity that person contacts for assistance;(4) identifying best practices in investigating employee misclassification; (5) identifying resources needed for better enforcement of employee misclassification; (6) informing and educating stakeholders on rights and responsibilities related to employee misclassification; (7) serving as a unified point of contact for workers, businesses, and the public impacted by misclassification;(8) informing the public on enforcement actions taken by the partnership entities; and (9) performing other duties as necessary to: (i) increase the effectiveness of detection investigation, enforcement, and deterrence of employee misclassification; and (ii) carry out the purposes of the partnership. The legislation also calls for public outreach coordination and updating of websites involving worker classification laws.

### Assumptions

The legislation assumes there would be regular meetings and joint outreach involving issues surrounding workers misclassification. Each agency involved has their own civil enforcement capabilities, so the biggest impact would be to the CFB at Commerce. The Department anticipates this partnership may result in more cases referred to the CFB for investigation and referrals to prosecutors. The Department assumes that the CFB is the only criminal enforcement agency who would receive criminal referrals from this group, which would increase the investigations the CFB does. As the statute is drafted, there is no immediate fiscal impact to the Department .

### Expenditure and/or Revenue Formula

N/A

### Long-Term Fiscal Considerations

### Local Fiscal Impact

### References/Sources

**Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Amy Trumper

**Phone:** 651-539-1517

**Date:** 3/26/2024 7:48:04 PM

**Email:** amy.trumper@state.mn.us

## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Employment and Economic Dvlpmt**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              |     | X  |
| Fee/Departmental Earnings |     | X  |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings) |  | Biennium |        |        | Biennium |        |
|----------------------|--|----------|--------|--------|----------|--------|
| Dollars in Thousands |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                |  | -        | -      | -      | -        | -      |
| Biennial Total       |  |          |        | -      |          | -      |

| Full Time Equivalent Positions (FTE) |  | Biennium |        |        | Biennium |        |
|--------------------------------------|--|----------|--------|--------|----------|--------|
|                                      |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| Total                                |  | -        | -      | -      | -        | -      |

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karl Palm      **Date:** 4/11/2024 4:22:07 PM  
**Phone:** 651-296-6055      **Email:** karl.palm@lbo.mn.gov

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |  | <b>Biennium</b> |               |               | <b>Biennium</b> |               |
|--|--|-----------------|---------------|---------------|-----------------|---------------|
| Dollars in Thousands                                     |  | <b>FY2023</b>   | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b>   | <b>FY2027</b> |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |  |                 |               |               |                 |               |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |
| <b>2 - Revenues, Transfers In*</b>                       |  |                 |               |               |                 |               |
| <b>Total</b>   |  | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |  |                 |               | -             |                 | -             |

**Bill Description**

This bill enhances efforts to address the misclassification of employees as independent contractors. DEED is included in the multi-agency Intergovernmental Misclassification Enforcement and Education Partnership, in which DEED has enforcement authority under chapters 268 and 268B.

**Assumptions**

There should be no fiscal impact on DEED for this bill - our only obligation is to participate in the Intergovernmental Misclassification Enforcement and Education Partnership, and that can be done with existing staff resources.

**Expenditure and/or Revenue Formula****Long-Term Fiscal Considerations****Local Fiscal Impact****References/Sources****Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Ross Whittemore

**Phone:** 651-259-7626

**Date:** 4/11/2024 3:47:03 PM

**Email:** ross.whittemore@state.mn.us

## SF4483 - 3E - Misclassification of Employees; Penalties

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Labor**  
 Date Completed: **4/12/2024 3:04:50 PM**  
 Agency: **Revenue Dept**

| State Fiscal Impact       | Yes | No |
|---------------------------|-----|----|
| Expenditures              | X   |    |
| Fee/Departmental Earnings |     | X  |
| Tax Revenue               |     | X  |
| Information Technology    |     | X  |
| Local Fiscal Impact       |     | X  |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

| State Cost (Savings) |  | Biennium |        |        | Biennium |        |
|----------------------|--|----------|--------|--------|----------|--------|
| Dollars in Thousands |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| General Fund         |  | -        | -      | 143    | -        | -      |
| Total                |  | -        | -      | 143    | -        | -      |
| Biennial Total       |  |          |        | 143    |          | -      |

| Full Time Equivalent Positions (FTE) |  | Biennium |        |        | Biennium |        |
|--------------------------------------|--|----------|--------|--------|----------|--------|
|                                      |  | FY2023   | FY2024 | FY2025 | FY2026   | FY2027 |
| General Fund                         |  | -        | -      | .71    | -        | -      |
| Total                                |  | -        | -      | .71    | -        | -      |

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Joel Enders      **Date:** 4/12/2024 11:16:47 AM  
**Phone:** 651-284-6542      **Email:** joel.enders@lbo.mn.gov

### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

| <b>State Cost (Savings) = 1-2</b>                        |   | <b>Biennium</b> |               |               | <b>Biennium</b> |               |
|--|---|-----------------|---------------|---------------|-----------------|---------------|
| Dollars in Thousands                                     |   | <b>FY2023</b>   | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b>   | <b>FY2027</b> |
| General Fund   | - | -               | 143           | -             | -               | -             |
| <b>Total</b>   | - | -               | <b>143</b>    | -             | -               | -             |
| <b>Biennial Total</b>                                    |   |                 | <b>143</b>    |               |                 | -             |
| <b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b> |   |                 |               |               |                 |               |
| General Fund   | - | -               | 143           | -             | -               | -             |
| <b>Total</b>   | - | -               | <b>143</b>    | -             | -               | -             |
| <b>Biennial Total</b>                                    |   |                 | <b>143</b>    |               |                 | -             |
| <b>2 - Revenues, Transfers In*</b>                       |   |                 |               |               |                 |               |
| General Fund   | - | -               | -             | -             | -               | -             |
| <b>Total</b>   | - | -               | -             | -             | -               | -             |
| <b>Biennial Total</b>                                    |   |                 | -             |               |                 | -             |

### Bill Description

Sections 9-10 of the bill create an Intergovernmental Misclassification Enforcement and Education Partnership of Minnesota agencies to review, identify and investigate issues of worker misclassification. The Department of Revenue is a partner along with the Department of Labor and Industry, the Department of Employment and Economic Development, the Department of Commerce, and the attorney general. The partnership would share information necessary for investigations and collaborate on investigations, unless prohibited by federal law.

Section 10, subdivision 7, paragraph (b) requires each partnership entity to maintain on its website information about worker misclassification laws, including requirements for employers and employees, consequences for misclassifying workers, and contact information for other partnership entities.

Section 11 authorizes the disclosure of return information by the Department of Revenue to the Commissioner of Commerce regarding compliance with employee insurance coverage under MS 176.181.

Section 12 authorizes disclosure of return information by the Department of Revenue to the attorney general regarding compliance with labor standards and wages under MS 177.45 or employment under MS 181.1721.

These sections are effective the day following final enactment.

### Assumptions

The Department of Revenue (Revenue) assumes an information sharing agreement is needed in order to share relevant information with the partnership.

The Income Tax and Withholding (ITW) Division assumes no new costs associated with this bill as ITW currently engages in worker misclassification enforcement. The division will provide information to the partnership regarding efforts of Revenue on worker misclassification audits and outreach. ITW assumes it will compile and share any relevant information with the partnership but does not expect any new cost to the agency in doing so.

The Appeals, Legal Services, and Disclosure Division assumes its Disclosure and Records Management Unit (DRM) will need to work on four direct agency-to-agency data sharing agreements. Time would be spent negotiating, drafting, and executing the agreements. Further, DRM attorneys will perform legal reviews of the agreements and provide legal advice on the drafting and negotiation of the agreements. DRM has experience negotiating and drafting these agreements with other agencies and is basing its assumptions on that experience. DRM assumes it will need .71 FTE in FY25 for this work.

### FTE Impact

| FTEs   | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|--|---------|---------|---------|---------|
| Appeals, Legal, and Disclosure staff (Attorneys) |         | .71     |         |         |
| Total FTE Impact                                 |         | .71     |         |         |

Note: Totals may vary slightly due to rounding.

### **Expenditure and/or Revenue Formula**

#### **Administrative Impact**

| Administrative Costs (Savings)       | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|--------------------------------------|---------|---------|---------|---------|---------|
| Employee Compensation                |         |         | 142,955 |         |         |
| Total Administrative Costs (Savings) |         |         | 142,955 |         |         |

Note: This table uses whole numbers. Totals may vary slightly due to rounding.

### **Long-Term Fiscal Considerations**

N/A

### **Local Fiscal Impact**

N/A

### **References/Sources**

Agency staff provided information for this fiscal note.

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

#### **Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Chelsea Magadance

**Date:** 4/12/2024 11:12:23 AM

**Phone:** 651-556-6308

**Email:** chelsea.magadance@state.mn.us