Minnesota
Employment
Law Council

MEMORANDUM

TO: Senate Judiciary and Public Safety Committee

FROM: Minnesota Employment Law Council

DATE: March 18, 2024

RE: S.F. 4483, 1st Engrossment

We write to respectfully express concerns regarding S.F. 4483, which expands potential remedies for worker misclassification. The Minnesota Employment Law Council ("MELC") agrees that misclassified workers should have appropriate remedies, many of which are provided under existing law. However, MELC respectfully recommends adjustments to S.F. 4483 in order to avoid unintended consequences, particularly on employers and others who have no intention of violating the law. We appreciate the opportunity to discuss these concerns and to work with the bill author as this issue proceeds.

Expanded Violations (Lines 4.27-5.10) + Expanded Civil Penalties (Lines 6.29-6.31)

Lines 6.29-6.31 provide for civil penalties of up to $10,000 per misclassification violation. Given the expanded range of violations set forth at Lines 4.27-5.10, that may mean multiple civil penalties for a single misclassified worker (misclassification itself, plus inaccurate reporting of employee status, plus execution of an inaccurate independent contractor agreement). These civil penalties are not remedies needed to make an individual worker whole; those remedies (*i.e.*, compensation for lost wages, lost benefits, etc.) are provided elsewhere in this bill and under existing law.

These stacked civil penalties are not limited to deliberate wrongdoers. While obvious instances of misclassification grab headlines, in most instances, a worker is determined to be misclassified (if at all) as the result of a fact-intensive, multi-factor analysis. In those instances, the employer typically did not intend to violate the law, and often has a good-faith basis to believe that independent contractor status is appropriate, even if the employer is mistaken.

In those instances, MELC respectfully submits that public policy is not served by potentially imposing tens of thousands of dollars in stacked civil penalties on an employer that did not deliberately break the law. That may be easily avoided by limiting the listed civil penalties to "willful" violations.

Expansion of "Consequential Damages" (Lines 6.21-6.28)

In this section, damages that may be awarded to a misclassified worker are expanded in two troublesome respects. First, "consequential damages" payable to an aggrieved employee are expanded to include "employer contributions to unemployment insurance; Social Security and Medicare." Those amounts are appropriately directed to the proper government agency on the employee's behalf, pursuant to applicable law, not payable directly to the employee.

Further, consequential damages are expanded to include "any costs and expenses incurred by the individual resulting from the person's failure to classify, represent or treat the individual as an employee." That provision is extraordinarily overbroad (and similarly overbroad provisions have been appropriately

removed from other bills in recent years). The "resulting from" standard provides no meaningful limit on what might be claimed as damages in a misclassification case. By way of illustration, if a worker did not purchase health insurance, but would have been covered by the employer's plan if they were classified as an employee, would the worker's potential unpaid medical bills "result from" misclassification? Courts have consistently rejected such a broad understanding of "consequential damages," but the language of this bill raises serious due process questions as to whether an employer could face effectively limitless exposure.

Thank you for your consideration.

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