

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3850

(SENATE AUTHORS: PAPPAS and McEwen)

DATE
02/19/2024

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11634 Introduction and first reading
Referred to Labor

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to labor and industry; modifying provisions relating to occupational health
- 1.3 and safety; amending Minnesota Statutes 2022, sections 182.664, subdivisions 3,
- 1.4 5; 182.665; 182.666, subdivision 6; 182.667, by adding a subdivision; Minnesota
- 1.5 Statutes 2023 Supplement, sections 182.6526, subdivision 1; 182.677, subdivisions
- 1.6 1, 2.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2023 Supplement, section 182.6526, subdivision 1, is
- 1.9 amended to read:
- 1.10 Subdivision 1. **Definitions.** (a) The terms defined in this subdivision have the meanings
- 1.11 given.
- 1.12 (b) "Aggregated employee work speed data" means a compilation of employee work
- 1.13 speed data for multiple employees, in summary form, assembled in full or in another form
- 1.14 such that the data cannot be identified with any individual.
- 1.15 (c) "Commissioner" means the commissioner of labor and industry.
- 1.16 (d)(1) Except as provided in clause (2), "employee" means ~~an employee~~ a person who
- 1.17 meets the definition in section 182.651, subdivision 9, and who works at a warehouse
- 1.18 distribution center.
- 1.19 (2) For the purposes of subdivisions 2, 3, and 4 only, "employee" means ~~a nonexempt~~
- 1.20 ~~employee performing~~ a person who meets the definition in section 182.651, subdivision 9,
- 1.21 does not meet any of the exceptions set forth in section 177.23, subdivision 7, clauses (1)
- 1.22 to (19), and who performs warehouse work occurring on the property of a warehouse
- 1.23 distribution center ~~and~~. Employee does not include ~~a nonexempt employee~~ any person

performing solely manufacturing, administrative, sales, accounting, human resources, or driving work at, or to and from, a warehouse distribution center.

(e) "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including but not limited to quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks. Employee work speed data does not include itemized earnings statements pursuant to chapter 181, except for any content of those records that includes employee work speed data as defined in this paragraph.

(f) "Employer" means a person who meets the definition in section 182.651, subdivision 7, and who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 250 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state. For purposes of this paragraph, all employees of an employer's unitary business, as defined in section 290.17, subdivision 4, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

(g) "Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) codes:

(1) 493110 for General Warehousing and Storage;

(2) 423 for Merchant Wholesalers, Durable Goods;

(3) 424 for Merchant Wholesalers, Nondurable Goods;

(4) 454110 for Electronic Shopping and Mail-Order Houses; and

(5) 492110 for Couriers and Express Delivery Services.

(h) "Quota" means a work standard under which:

(1) an employee or group of employees is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or handle or produce a quantified amount of material, or perform without a certain number of errors or defects, as measured at the individual or group level within a defined time period; or

(2) an employee's actions are categorized and measured between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard may have an adverse impact on the employee's continued employment.

Sec. 2. Minnesota Statutes 2022, section 182.664, subdivision 3, is amended to read:

Subd. 3. **Powers and duties of board.** The review board shall review and decide appeals from final decisions and orders of the commissioner, including decisions issued by administrative law judges, petitions to vacate final orders of the commissioner, and with the agreement of the parties, may review and decide petitions for decisions based on stipulated facts. The powers of the board in the conduct of hearings, including the power to sign decisions and orders, may be delegated to a member, members, or the board chair. The board may schedule a hearing for purposes of taking oral argument. A notice stating the time and place of the hearing must be given ten days in advance of such a hearing to the parties and copies of the notice of such hearing shall be served by the employer as rules of the board shall require. The hearings shall be open to the public and the board's decisions and orders shall be maintained and available for examination. Chapter 13D does not apply to meetings or hearings of the board when the board is deliberating to reach its decision on an appeal or petition under its jurisdiction.

Sec. 3. Minnesota Statutes 2022, section 182.664, subdivision 5, is amended to read:

Subd. 5. **Authority of board; ~~standard~~ scope of review.** (a) For the purpose of carrying out its functions under this chapter, two members of the board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members. The decisions and orders of an administrative law judge, or final orders of the commissioner, may be appealed to the review board by the employer, employee, or their authorized representatives or any party, within 30 days following service by mail of the administrative law judge's decision and order, or final order of the commissioner.

(b) The review board shall have authority to revise, ~~confirm~~ affirm, remand, or reverse the decision and order of administrative law judges, ~~or~~.

(c) The review board shall also have authority to affirm, or vacate and remand, final orders of the commissioner when a petition to vacate a final order is filed. The board shall only vacate and remand a final order of the commissioner relating to a petition to vacate upon a showing of good cause. For purposes of this section, good cause is limited to fraud, mistake of fact ~~or by the commissioner~~, mistake of law by the commissioner, or newly discovered evidence.

Sec. 4. Minnesota Statutes 2022, section 182.665, is amended to read:

182.665 JUDICIAL REVIEW.

Any person aggrieved by a final order of the board in a contested case, by a final order of the board on a petition to vacate a final order of the commissioner, or by any standard, rule, or order promulgated by the commissioner, is entitled to judicial review thereof in accordance with the applicable provisions of chapter 14.

Sec. 5. Minnesota Statutes 2022, section 182.666, subdivision 6, is amended to read:

Subd. 6. **Authority to assess fines; considerations.** Only the commissioner shall have authority to assess all proposed fines provided in this section, ~~giving.~~ Notwithstanding the factors in section 14.045, subdivision 3, the commissioner must give due consideration only to the following factors:

(1) appropriateness of the fine with respect to the size of the business of the employer;

(2) the gravity of the violation;

(3) the good faith of the employer; and

(4) the history of previous violations.

Sec. 6. Minnesota Statutes 2022, section 182.667, is amended by adding a subdivision to read:

Subd. 4. **Investigative data.** The commissioner may share active and inactive civil investigative data pursuant to section 13.39 with a city or county attorney for purposes of enforcing this section. The commissioner may share complete data and need not withhold any data under the requirements of chapter 13 or 182 or any other state privacy law.

Sec. 7. Minnesota Statutes 2023 Supplement, section 182.677, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the definitions in this subdivision apply unless otherwise specified.

(b) "Health care facility" means a hospital with a North American Industrial Classification system code of 622110, 622210, or 622310; an outpatient surgical center with a North American Industrial Classification system code of 621493; and a nursing home with a North American Industrial Classification system code of 623110.

(c) "Warehouse distribution center" means ~~an employer~~ a site in Minnesota with 100 or more employees ~~in Minnesota~~ and a North American Industrial Classification system code of 493110, 423110 to 423990, 424110 to 424990, 454110, or 492110.

(d) "Meatpacking site" means a ~~meatpacking or poultry processing site~~ in Minnesota with 100 or more employees ~~in Minnesota~~ and a North American Industrial Classification system code of 311611 to 311615, except 311613.

(e) "Musculoskeletal disorder" or "MSD" means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, or spinal discs.

Sec. 8. Minnesota Statutes 2023 Supplement, section 182.677, subdivision 2, is amended to read:

Subd. 2. **Ergonomics program required.** (a) Every employer with employees at a licensed health care facility, warehouse distribution center, or meatpacking site in the state shall create and implement an effective written ergonomics program establishing the employer's plan to minimize the risk of its employees developing or aggravating musculoskeletal disorders. The ergonomics program shall focus on eliminating the risk. To the extent risk exists, the ergonomics program must include feasible administrative or engineering controls to reduce the risk.

(b) The program shall include:

(1) an assessment to identify and reduce musculoskeletal disorder risk factors in the facility;

(2) an initial and ongoing training of employees on ergonomics and its benefits, including the importance of reporting early symptoms of musculoskeletal disorders;

(3) a procedure to ensure early reporting of musculoskeletal disorders to prevent or reduce the progression of symptoms, the development of serious injuries, and lost-time claims;

(4) a process for employees to provide possible solutions that may be implemented to reduce, control, or eliminate workplace musculoskeletal disorders;

(5) procedures to ensure that physical plant modifications and major construction projects are consistent with program goals; and

(6) annual evaluations of the ergonomics program and whenever a change to the work process occurs.