

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 4384

(SENATE AUTHORS: MCEWEN)

DATE	D-PG	OFFICIAL STATUS
02/29/2024	11845	Introduction and first reading Referred to Labor

1.1

A bill for an act

1.2

relating to labor standards; making policy and technical changes; amending

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Minnesota Statutes 2022, sections 13.79, subdivision 1; 177.30; 181.941,

1.4

subdivision 4; 181.943; 181A.08; 181A.12, subdivision 1, by adding subdivisions;

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Minnesota Statutes 2023 Supplement, sections 177.27, subdivisions 2, 4, 7; 177.42,

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subdivision 2; 181.212, subdivision 7; 181.939, subdivision 2.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2022, section 13.79, subdivision 1, is amended to read:

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Subdivision 1. **Identity of employees making complaints complainants.** Data that

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identify ~~complaining employees and that appear on complaint forms received by~~ individuals

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who have complained to the Department of Labor and Industry concerning alleged violations

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of the Fair Labor Standards Act, section 181.75 or 181.9641, chapter 177; chapter 181;

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sections 179.86 to 179.877; chapter 181A; or rules adopted pursuant to these statutes, are

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classified as private data. The commissioner may disclose this data to other government

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entities with written consent from the complainant if the commissioner determines that the

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disclosure furthers an enforcement action of the Department of Labor and Industry or another

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government entity.

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Sec. 2. Minnesota Statutes 2023 Supplement, section 177.27, subdivision 2, is amended

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to read:

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Subd. 2. **Submission of records; penalty.** (a) The commissioner may require the

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employer of employees working in the state to submit to the commissioner photocopies,

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certified copies, or, if necessary, the originals of employment records which the commissioner

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deems necessary or appropriate. The records which may be required include full and correct

statements in writing, including sworn statements by the employer, containing information relating to wages, hours, names, addresses, and any other information pertaining to the employer's employees and the conditions of their employment as the commissioner deems necessary or appropriate.

(b) Employers and persons requested by the commissioner to produce records shall respond within the time and in the manner specified by the commissioner.

(c) The commissioner may require the records to be submitted by certified mail delivery or, if necessary, by personal delivery by the employer or a representative of the employer, as authorized by the employer in writing.

(d) The commissioner may fine the employer up to \$10,000 for each failure to submit or deliver records as required by this section. This penalty is in addition to any penalties provided under section 177.32, subdivision 1. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered.

Sec. 3. Minnesota Statutes 2023 Supplement, section 177.27, subdivision 4, is amended to read:

Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with sections 177.21 to 177.435, 179.86, 181.02, 181.03, 181.031, 181.032, 181.10, 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.165, 181.172, paragraph (a) or (d), 181.214 to 181.217, 181.275, subdivision 2a, 181.635, 181.64, 181.722, 181.79, 181.85 to 181.89, 181.939 to 181.943, 181.9445 to 181.9448, 181.987, 181.991, 268B.09, subdivisions 1 to 6, and 268B.14, subdivision 3, with any rule promulgated under section 177.28, 181.213, or 181.215. The commissioner shall issue an order requiring an employer to comply with sections 177.41 to 177.435, 181.165, or 181.987 if the violation is repeated. For purposes of this subdivision only, a violation is repeated if at any time during the two years that preceded the date of violation, the commissioner issued an order to the employer for violation of sections 177.41 to 177.435, 181.165, or 181.987 and the order is final or the commissioner and the employer have entered into a settlement agreement that required the employer to pay back wages that were required by sections 177.41 to 177.435. The department shall serve the order upon the employer or the employer's authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69 or 181.165. If,

within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner. For the purposes of this subdivision, an employer includes a contractor that has assumed a subcontractor's liability within the meaning of section 181.165.

Sec. 4. Minnesota Statutes 2023 Supplement, section 177.27, subdivision 7, is amended to read:

Subd. 7. **Employer liability.** If an employer is found by the commissioner to have violated a section identified in subdivision 4, or any rule adopted under section 177.28, 181.213, or 181.215, and the commissioner issues an order to comply, the commissioner shall order the employer to cease and desist from engaging in the violative practice and to take such affirmative steps that in the judgment of the commissioner will effectuate the purposes of the section or rule violated. The commissioner shall order the employer to pay to the aggrieved parties back pay, gratuities, and compensatory damages, less any amount actually paid to the employee by the employer, and for an additional equal amount as liquidated damages. The commissioner may also order reinstatement and any other appropriate relief to the aggrieved parties. Any employer who is found by the commissioner to have repeatedly or willfully violated a section or sections identified in subdivision 4 shall be subject to a civil penalty of up to \$10,000 for each violation for each employee. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered. In addition, the commissioner may order the employer to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceeding, unless payment of costs would impose extreme financial hardship on the employer. If the employer is able to establish extreme financial hardship, then the commissioner may order the employer to pay a percentage of the total costs that will not cause extreme financial hardship. Costs include but are not limited to the costs of services rendered by the attorney general, private attorneys if engaged by the department, administrative law judges, court reporters, and expert witnesses as well as the cost of transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner's order from the date the order is signed by the commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow accounts for purposes of distributing damages.

Sec. 5. Minnesota Statutes 2022, section 177.30, is amended to read:

177.30 KEEPING RECORDS; PENALTY.

(a) Every employer subject to sections 177.21 to 177.44 must make and keep a record of:

(1) the name, address, and occupation of each employee;

(2) the rate of pay, and the amount paid each pay period to each employee;

(3) the hours worked each day and each workweek by the employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate;

(4) a list of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies;

(5) a copy of the notice provided to each employee as required by section 181.032, paragraph (d), including any written changes to the notice under section 181.032, paragraph (f);

(6) for each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks specifying for each employee: name; identifying number; prevailing wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs; ~~and~~

(7) earnings statements for each employee for each pay period as required by section 181.032, paragraphs (a) and (b); and

(8) other information the commissioner finds necessary and appropriate to enforce sections 177.21 to 177.435. The records must be kept for three years in the premises where an employee works except each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the records must be kept for three years after the contracting authority has made final payment on the public works project.

(b) All records required to be kept under paragraph (a) must be readily available for inspection by the commissioner upon demand. The records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with this paragraph within 72 hours.

(c) The commissioner may fine an employer up to \$1,000 for each failure to maintain records as required by this section, and up to \$5,000 for each repeated failure. This penalty is in addition to any penalties provided under section 177.32, subdivision 1. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered.

(d) If the records maintained by the employer do not provide sufficient information to determine the exact amount of back wages due an employee, the commissioner may make a determination of wages due based on available evidence.

Sec. 6. Minnesota Statutes 2023 Supplement, section 177.42, subdivision 2, is amended to read:

Subd. 2. **Project.** "Project" means demolition, erection, construction, alteration, improvement, restoration, remodeling, or repairing of a public building, structure, facility, land, or other public work, which includes any work suitable for and intended for use by the public, or for the public benefit, financed in whole or part by state funds. Project also includes demolition, erection, construction, alteration, improvement, restoration, remodeling, or repairing of a building, structure, facility, land, or public work when the acquisition of property, predesign, design, or demolition is financed in whole or part by state funds.

Sec. 7. Minnesota Statutes 2023 Supplement, section 181.212, subdivision 7, is amended to read:

Subd. 7. **Voting.** The affirmative vote of five board members is required for the board to take any action, including actions necessary to establish minimum nursing home employment standards under section 181.213. At least two of the five affirmative votes must be cast by the commissioner members or their appointees.

Sec. 8. Minnesota Statutes 2023 Supplement, section 181.939, subdivision 2, is amended to read:

Subd. 2. **Pregnancy accommodations.** (a) An employer must provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth upon request, with the advice of a licensed health care provider or certified doula, unless

the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business. A pregnant employee shall not be required to obtain the advice of a licensed health care provider or certified doula, nor may an employer claim undue hardship for the following accommodations: (1) more frequent or longer restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. The employee and employer shall engage in an interactive process with respect to an employee's request for a reasonable accommodation. Reasonable accommodation may include but is not limited to temporary transfer to a less strenuous or hazardous position, temporary leave of absence, modification in work schedule or job assignments, seating, more frequent or longer break periods, and limits to heavy lifting. Notwithstanding any other provision of this subdivision, an employer shall not be required to create a new or additional position in order to accommodate an employee pursuant to this subdivision and shall not be required to discharge an employee, transfer another employee with greater seniority, or promote an employee.

(b) Nothing in this subdivision shall be construed to affect any other provision of law relating to sex discrimination or pregnancy or in any way diminish the coverage of pregnancy, childbirth, or health conditions related to pregnancy or childbirth under any other provisions of any other law.

(c) An employer shall not require an employee to take a leave or accept an accommodation.

(d) An employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for asserting rights or remedies under this subdivision.

(e) For the purposes of this subdivision, "employer" means a person or entity that employs one or more employees and includes the state and its political subdivisions.

(f) During any leave for which an employee is entitled to benefits or leave under this subdivision, the employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents as if the employee was not on leave, provided, however, that the employee must continue to pay any employee share of the cost of the benefits.

Sec. 9. Minnesota Statutes 2022, section 181.941, subdivision 4, is amended to read:

Subd. 4. **Continued insurance.** ~~The employer must continue to make coverage available to the employee while on leave of absence under any group insurance policy, group subscriber~~

~~contract, or health care plan for the employee and any dependents. Nothing in this section requires the employer to pay the costs of the insurance or health care while the employee is on leave of absence. During any leave for which an employee is entitled to benefits or leave under this section, the employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents as if the employee was not on leave, provided, however, that the employee must continue to pay any employee share of the cost of the benefits.~~

Sec. 10. Minnesota Statutes 2022, section 181.943, is amended to read:

181.943 RELATIONSHIP TO OTHER LEAVE.

(a) The length of leave provided under section 181.941 may be reduced by any period of:

(1) paid parental, disability, personal, medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed to by the employer; or

(2) leave taken for the same purpose by the employee under United States Code, title 29, chapter 28.

(b) Nothing in sections 181.940 to 181.943 prevents any employer from providing leave benefits in addition to those provided in sections 181.940 to 181.944 or otherwise affects an employee's rights with respect to any other employment benefit.

(c) Notwithstanding paragraphs (a) and (b), the length of leave provided under section 181.941 must not be reduced by any period of paid or unpaid leave taken for prenatal care medical appointments.

Sec. 11. Minnesota Statutes 2022, section 181A.08, is amended to read:

181A.08 POWERS AND DUTIES OF THE DEPARTMENT.

Subdivision 1. **Inspections.** The commissioner, an authorized representative, or any truant officer may enter and inspect the place of business or employment and may interview any employees, of any employer of employees in any occupation in the state, all for the purpose of ascertaining whether any minors are employed contrary to the provisions of sections 181A.01 to 181A.12. Such authorized persons may require that employment certificates, age certificates, and lists of minors employed shall be produced for their inspection.

8.1 Subd. 2. **Compliance orders.** The commissioner or an authorized representative may
8.2 issue an order requiring an employer to comply with the provisions of sections 181A.01 to
8.3 181A.12 or with any rules promulgated under the provisions of section 181A.09. Any such
8.4 order shall be served by the department upon the employer or an authorized representative
8.5 in person or by certified mail at the employers place of business. If an employer wishes to
8.6 contest the order for any reason, the employer shall file written notice of objection with the
8.7 commissioner within ~~ten~~ 15 calendar days after service of said order upon said employer.
8.8 Thereafter, a public hearing shall be held in accordance with the provisions of sections 14.57
8.9 to 14.69, and such rules consistent therewith as the commissioner shall make. If, within 15
8.10 calendar days after being served with the order, the employer fails to file a written notice
8.11 of objection with the commissioner, the order becomes a final order of the commissioner.

8.12 Subd. 2a. **Employer liability.** If an employer is found by the commissioner to have
8.13 violated any provision of sections 181A.01 to 181A.12, or any rules promulgated under
8.14 section 181A.09, and the commissioner issues an order to comply under subdivision 2, the
8.15 commissioner shall order the employer to cease and desist from engaging in the violative
8.16 practice and to take affirmative steps that in the judgment of the commissioner will effectuate
8.17 the purposes of the section or rule violated. The commissioner may order the employer to
8.18 reimburse the department and the attorney general for appropriate litigation and hearing
8.19 costs expended in preparation for and in conducting the contested case proceeding, unless
8.20 payment of costs would impose extreme financial hardship on the employer. If the employer
8.21 is able to establish extreme financial hardship, then the commissioner may order the employer
8.22 to pay a percentage of the total costs that will not cause extreme financial hardship. Costs
8.23 include but are not limited to the costs of services rendered by the attorney general, private
8.24 attorneys if engaged by the department, administrative law judges, court reporters, and
8.25 expert witnesses as well as the cost of transcripts. Interest shall accrue on, and be added to,
8.26 the unpaid balance of a commissioner's order from the date the order is signed by the
8.27 commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1,
8.28 paragraph (c).

8.29 Subd. 3. **Restraining orders.** The commissioner or an authorized representative may
8.30 apply to any court of competent jurisdiction for an order restraining the violation of an order
8.31 issued by the commissioner pursuant to subdivision 2, or for an order enjoining and
8.32 restraining violations of this chapter or rules adopted pursuant to section 181A.09.

9.1 Sec. 12. Minnesota Statutes 2022, section 181A.12, subdivision 1, is amended to read:

9.2 Subdivision 1. **Fines; penalty.** (a) Any employer who hinders or delays the department
 9.3 or its authorized representative in the performance of its duties under sections 181A.01 to
 9.4 181A.12 or refuses to admit the commissioner or an authorized representative to any place
 9.5 of employment or refuses to make certificates or lists available as required by sections
 9.6 181A.01 to 181A.12, or otherwise violates any provisions of sections 181A.01 to 181A.12
 9.7 or any rules issued pursuant thereto shall be assessed a fine to be paid to the commissioner
 9.8 for deposit in the general fund. The fine may be recovered in a civil action in the name of
 9.9 the department brought in the district court of the county where the violation is alleged to
 9.10 have occurred or the district court where the commissioner has an office. Fines are ~~in~~ up to
 9.11 the amounts as follows for each violation:

9.12	(1)	employment of minors under the age of 14	\$	500
9.13		(each employee)		
9.14	(2)	employment of minors under the age of 16		500
9.15		during school hours while school is in session		
9.16		(each employee)		
9.17	(3)	employment of minors under the age of 16		500
9.18		before 7:00 a.m. (each employee)		
9.19	(4)	employment of minors under the age of 16		500
9.20		after 9:00 p.m. (each employee)		
9.21	(5)	employment of a high school student under		1,000
9.22		the age of 18 in violation of section 181A.04,		
9.23		subdivision 6 (each employee)		
9.24	(6)	employment of minors under the age of 16		500
9.25		over eight hours a day (each employee)		
9.26	(7)	employment of minors under the age of 16		500
9.27		over 40 hours a week (each employee)		
9.28	(8)	employment of minors under the age of 18 in		1,000
9.29		occupations hazardous or detrimental to their		
9.30		well-being as defined by rule (each employee)		
9.31	(9)	employment of minors under the age of 16 in		1,000
9.32		occupations hazardous or detrimental to their		
9.33		well-being as defined by rule (each employee)		
9.34	(10)	minors under the age of 18 injured in		5,000
9.35		hazardous employment (each employee)		
9.36	(11)	minors employed without proof of age (each		250
9.37		employee)		

9.38 (b) An employer who refuses to make certificates or lists available as required by sections
 9.39 181A.01 to 181A.12 shall be assessed a \$500 fine.

9.40 (c) Notwithstanding the factors in section 14.045, subdivision 3, the commissioner need
 9.41 only consider the size of the business of the employer, the gravity of the violation, and the

10.1 history of previous violations when determining the total amount of fines to issue under
10.2 this subdivision.

10.3 Sec. 13. Minnesota Statutes 2022, section 181A.12, is amended by adding a subdivision
10.4 to read:

10.5 Subd. 4. **Liquidated damages.** An employer who employs a minor in violation of section
10.6 181A.04, subdivision 5, may be liable to the minor for an amount equal to the minor's regular
10.7 rate of pay for all hours worked in violation of section 181A.04, subdivision 5, as liquidated
10.8 damages, in addition to the wages earned by the minor.

10.9 Sec. 14. Minnesota Statutes 2022, section 181A.12, is amended by adding a subdivision
10.10 to read:

10.11 Subd. 5. **Retaliation.** An employer shall not discharge, discipline, penalize, interfere
10.12 with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee
10.13 for asserting rights or remedies under sections 181A.01 to 181A.12 or any rules promulgated
10.14 under section 181A.09, including but not limited to filing a complaint with the department,
10.15 informing the employer of the employee's intention to file a complaint, or participating in
10.16 an investigation by the department. In addition to any other remedies provided by law, the
10.17 commissioner may order an employer in violation of this subdivision to provide back pay,
10.18 compensatory damages, reinstatement, and any other appropriate relief to the aggrieved
10.19 employee.