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S.F. No. 4483 – Misclassification of employees

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Date: March 7, 2024

S.F. 4483 makes changes to misclassification provisions; creates a multi-agency Intergovernmental Misclassification Enforcement and Education Partnership, allows for data sharing related to misclassification investigation, outreach, prevention, and enforcement; clarifies and provides for additional penalties and enforcement of misclassification of employees and construction employees; and establishes a new multi-part independent contractor test for building construction and improvement services.

Section 1 [§ 177.27] Examination of records. Allows questioning of employers and other individuals for provisions subject to compliance order enforcement by the Department of Labor and Industry (DLI).

Section 2 [§ 177.27] Submission of records; penalty. Adds clarifying language about employment status records.

Section 3 [§ 177.27] Adequacy of records. Removes mediation language from adequacy of records provision.

Section 4 [§ 177.27] Compliance orders. Adds a reference to section 181.723 (misclassification) allowing the commissioner to issue compliance orders for misclassification violations.

Section 5 [§ 177.27] Employer liability. Clarifies that employer liability for an order to comply under this section is additional to any liability or remedies otherwise provided for in the specific violated section.

Section 6 [§ 181.171] Civil action; damages. Adds section 181.722, misclassification of employees, and section 181.723, misclassification of construction employees, as amended in sections 7 and 8 to the list of labor sections that can be enforced through a private civil cause of action under section 181.171.

Section 7 [§ 181.722] Misclassification of employees. Subdivision 1 specifies prohibited misclassification activities for an individual who is a person's employee, including failing to classify, represent, treat, report, disclose, document, or enter into an agreement with the individual as an employee, or requiring the employee to agree to be misclassified or treated as something other than an employee. Allows for personal liability for each misclassification violation. Adds successor liability for outstanding compliance orders for misclassification violations if three or more of the seven successor factors apply to the successor company or employer.

Subdivision 2 provides definitions for terms including "person," "department," "commissioner," and "individual."

Subdivision 4 provides for additional penalties, investigation, and enforcement by the commissioner of labor and industry for each separate misclassification violation. Damages include compensatory damages, and penalties ranging from \$1000, to \$5000, to up to \$10,000 depending on the type of violation.

Makes other minor technical and clarifying changes in **subdivisions 3 and 5**.

Section 8 [§ 181.723] Misclassification of construction employees. Subdivision 1 modifies the definitions used in this section, including a new definition of independent contractor.

Subdivision 2 clarifies the limited application of this section to building construction and improvement services, including public or private sector commercial or residential building construction or improvement, unless one of the exclusions applies.

Subdivision 3 clarifies the presumption that a person providing building construction or improvement services for an employer in the regular course of the employer's business is considered an employee for the purposes of the construction codes and licensing chapter and certain labor laws, unless the independent contractor requirements under subdivision 4 are met.

Subdivision 4 adds a new multi-part test setting out 14 requirements to identify and classify an independent contractor operating a separate business entity in building construction and improvement services.

Subdivision 7 specifies prohibited misclassification activities for an independent contractor in the construction industry or for treating an employee as an independent contractor, including failing to classify, represent, treat, disclose, document, report, or enter into an agreement with the individual as an employee, or requiring the individual to register as a construction contractor or agree to be misclassified as an independent contractor. Allows for personal liability for each misclassification violation. And adds successor liability for outstanding compliance orders for misclassification violations if three or more of the seven successor factors apply to the successor company or employer. Adds document retention requirements for independent contractor status and provides for additional penalties, investigation, and enforcement by the DLI commissioner for each separate misclassification violation. Damages include compensatory damages, and penalties ranging from \$1,000, to \$5,000, to up to \$10,000 depending on the type of violation.

Subdivisions 13 and 15 make other minor technical and clarifying changes.

Section 9 [§ 181.724] Intergovernmental misclassification enforcement and education partnership act. Sections 9 and 10 establish the Intergovernmental Misclassification Enforcement

and Education Partnership Act for the stated purpose of preventing employee misclassification and providing for coordination, collaboration, and information sharing between partnership entities. Provides definitions used in the Act.

Section 10 [§ 181.725] Intergovernmental misclassification enforcement and education partnership. Creates the Intergovernmental Misclassification Enforcement and Education Partnership, composed of the commissioners of labor and industry, revenue, employment and economic development, and commerce, and the attorney general. Requires the partnership to meet quarterly on issues related to investigation and outreach on employee misclassification. Sets out the partnership's duties, including efforts related to education, outreach, detection, investigation, deterrence, and enforcement of employee misclassification. Requires an annual presentation to the legislature on the partnership's efforts. Specifies information and recommendations to be included in the partnership's first presentation to the legislature and allows for meetings for this purpose.

Section 11 [§ 270B.14] Disclosure to Department of Commerce. Allows the commissioner of revenue to disclose certain tax return information to the commissioner of commerce as needed for the purposes of workers' compensation insurance compliance.

Section 12 [§ 270B.14] Disclosure to attorney general. Allows the commissioner of revenue to disclose a tax return or return information to the attorney general in order to determine whether a business is an employer or for enforcement purposes.

Section 13 [§ 326B.081] Applicable law. Expands the scope of law enforced by the DLI commissioner with respect to construction codes and licensing to include violations of wage protections and worker misclassification laws.

Section 14 [§ 326B.081] Licensing order. Amends a cross-reference regarding licensing orders.

Section 15 [§ 326B.081] Stop work order. Modifies the definition to reflect renaming as a "stop work order" instead of the current term "stop order."

Section 16 [§ 326B.082] Remedies available. Provides that the DLI commissioner's enforcement remedies for violations of construction codes and licensing laws may be used in addition to or as an alternative to other investigative and enforcement powers.

Section 17 [§ 326B.082] Access to information and property; subpoenas. Allows the DLI commissioner, in connection with actions to enforce the construction code and construction licensing laws, to demand data and information and to access all areas of a property subject to investigation or enforcement action.

Section 18 [§ 326B.082] Fax or email transmission. Allows for requests for reconsideration or a hearing on enforcement actions to be emailed to the DLI commissioner when the commissioner requests service by email.

Section 19 [§ 326B.082] Notice of violation. Allows for the DLI commissioner to issue notices of violation, in connection with a construction code or licensing enforcement action, to any individual who could be held liable for misclassification of a construction employee under the changes proposed in section 8 and makes the notice effective against any successor person.

Section 20 [§ 326B.082] Administrative orders; correction; assessment of monetary penalties.

Allows the DLI commissioner to assess monetary damages for violations of construction code and licensing provisions; to issue administrative orders for failure to correct notices of violation; to seek an order finding a failure to correct a notice of violation to be contempt of court; and to issue an administrative order against any person who could be held liable for misclassification of a construction employee under the changes proposed in **section 8**.

Section 21 [§ 326B.082] Stop work orders. Expands list of persons against whom the commissioner of labor and industry can issue stop work orders. Expands the list of conduct that can give rise to a stop work order to include failure to correct notices of violations. Allows a request for a hearing on a stop work order to be served by email. Allows for assessment of a \$5,000 per day penalty for violating a stop work order. Entitles employees of an entity subject to a final stop work order to receive up to 10 days pay.

Section 22 [§ 326B.082] Licensing orders; ground; reapplication. Allows the DLI commissioner to deny a construction license to a person who violated Minnesota labor laws, who violated orders from the DLI commissioner or other state commissioners, or who failed to comply with a commissioner's investigation.

Section 23 [§ 326B.082] Summary suspension. Allows summary suspension of a person's permit, license, registration, or certificate for engaging in prohibited activities related to independent contractor status.

Section 24 [§ 326B.082] Additional penalties and damages. Allows an additional \$1,000 penalty for any person who delays or obstructs an investigation.

Section 25 [§ 326B.701] Construction contractor registration. Modifies definitions. Requires applications to register as a contractor to include information on the number of employees the person has, the identities of all persons with an interest in the business entity, documentation of the person's compliance with worker's compensation and unemployment insurance laws for employees, and information on any violations issued to the person or other persons with an interest in the business entity by the commission in the preceding 10 years. Specifies that each day of performing construction without proper registration is a separate violation. Allows investigation and enforcement. Allows the DLI commissioner to use otherwise private application data for investigatory and enforcement purposes.