

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 61

(SENATE AUTHORS: KUNESH, Klein, Pappas and McEwen)

DATE	D-PG	OFFICIAL STATUS
01/09/2023	109	Introduction and first reading Referred to Labor
01/26/2023	388a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety
02/08/2023	745	Author added Klein
02/13/2023		Comm report: To pass as amended and re-refer to Finance Authors added Pappas; McEwen

1.1 A bill for an act

1.2 relating to labor and industry; modifying fair labor standards provisions for

1.3 agricultural and food processing workers; amending Minnesota Statutes 2022,

1.4 sections 177.27, subdivision 4; 179.86, subdivisions 1, 3, by adding subdivisions;

1.5 181.14, subdivision 1; 181.635, subdivisions 1, 2, 3, 4, 6; 181.85, subdivisions 2,

1.6 4; 181.86, subdivision 1; 181.87, subdivisions 2, 3, 7; 181.88; 181.89, subdivision

1.7 2, by adding a subdivision.

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

1.9 Section 1. Minnesota Statutes 2022, section 177.27, subdivision 4, is amended to read:

1.10 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an

1.11 employer to comply with sections 177.21 to 177.435, 179.86, 181.02, 181.03, 181.031,

1.12 181.032, 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d),

1.13 181.275, subdivision 2a, 181.635, 181.722, 181.79, 181.85 to 181.89, and 181.939 to

1.14 181.943, or with any rule promulgated under section 177.28. The commissioner shall issue

1.15 an order requiring an employer to comply with sections 177.41 to 177.435 if the violation

1.16 is repeated. For purposes of this subdivision only, a violation is repeated if at any time

1.17 during the two years that preceded the date of violation, the commissioner issued an order

1.18 to the employer for violation of sections 177.41 to 177.435 and the order is final or the

1.19 commissioner and the employer have entered into a settlement agreement that required the

1.20 employer to pay back wages that were required by sections 177.41 to 177.435. The

1.21 department shall serve the order upon the employer or the employer's authorized

1.22 representative in person or by certified mail at the employer's place of business. An employer

1.23 who wishes to contest the order must file written notice of objection to the order with the

1.24 commissioner within 15 calendar days after being served with the order. A contested case

1.25 proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15

2.1 calendar days after being served with the order, the employer fails to file a written notice
 2.2 of objection with the commissioner, the order becomes a final order of the commissioner.

2.3 Sec. 2. Minnesota Statutes 2022, section 179.86, subdivision 1, is amended to read:

2.4 Subdivision 1. **Definition.** For the purpose of this section, "employer" means an employer
 2.5 in the meatpacking or poultry processing industry.

2.6 Sec. 3. Minnesota Statutes 2022, section 179.86, subdivision 3, is amended to read:

2.7 Subd. 3. **Information provided to employee by employer.** (a) At the start of
 2.8 employment, an employer must provide an explanation in an employee's native language
 2.9 of the employee's rights and duties as an employee ~~either~~ both person to person ~~or~~ and
 2.10 through written materials that, at a minimum, include:

2.11 (1) a complete description of the salary and benefits plans as they relate to the employee;

2.12 (2) a job description for the employee's position;

2.13 (3) a description of leave policies;

2.14 (4) a description of the work hours and work hours policy; ~~and~~

2.15 (5) a description of the occupational hazards known to exist for the position; and

2.16 (6) when workers' compensation insurance coverage is required by chapter 176, the
 2.17 name of the employer's workers' compensation insurance carrier, the carrier's phone number,
 2.18 and the insurance policy number.

2.19 (b) The explanation must also include information on the following employee rights as
 2.20 protected by state or federal law and a description of where additional information about
 2.21 those rights may be obtained:

2.22 (1) the right to organize and bargain collectively and refrain from organizing and
 2.23 bargaining collectively;

2.24 (2) the right to a safe workplace; ~~and~~

2.25 (3) the right to be free from discrimination; and

2.26 (4) the right to workers' compensation insurance coverage.

2.27 (c) The Department of Labor and Industry shall provide a standard explanation form for
 2.28 use at the employer's option for providing the information required in subdivision 3. The
 2.29 form shall be available in English and Spanish and additional languages upon request.

3.1 (d) The requirements under this subdivision are in addition to the requirements under
3.2 section 181.032.

3.3 Sec. 4. Minnesota Statutes 2022, section 179.86, is amended by adding a subdivision to
3.4 read:

3.5 Subd. 5. **Civil action.** An employee injured by a violation of this section has a cause of
3.6 action for damages for the greater of \$1,000 per violation or twice the employee's actual
3.7 damages, plus costs and reasonable attorney fees. A damage award shall be the greater of
3.8 \$1,400 or three times actual damages for an employee injured by an intentional violation
3.9 of this section.

3.10 Sec. 5. Minnesota Statutes 2022, section 179.86, is amended by adding a subdivision to
3.11 read:

3.12 Subd. 6. **Fine.** The commissioner of labor and industry shall fine an employer not less
3.13 than \$400 or more than \$1,000 for each violation of subdivision 3. The fine shall be payable
3.14 to the employee aggrieved.

3.15 Sec. 6. Minnesota Statutes 2022, section 181.14, subdivision 1, is amended to read:

3.16 Subdivision 1. **Prompt payment required.** (a) When any such employee quits or resigns
3.17 employment, the wages or commissions earned and unpaid at the time the employee quits
3.18 or resigns shall be paid in full not later than the first regularly scheduled payday following
3.19 the employee's final day of employment, unless an employee is subject to a collective
3.20 bargaining agreement with a different provision. Wages are earned and unpaid if the
3.21 employee was not paid for all time worked at the employee's regular rate of pay or at the
3.22 rate required by law, including any applicable statute, regulation, rule, ordinance, government
3.23 resolution or policy, contract, or other legal authority, whichever rate of pay is greater. If
3.24 the first regularly scheduled payday is less than five calendar days following the employee's
3.25 final day of employment, full payment may be delayed until the second regularly scheduled
3.26 payday but shall not exceed a total of 20 calendar days following the employee's final day
3.27 of employment.

3.28 (b) Notwithstanding the provisions of paragraph (a), in the case of migrant workers, as
3.29 defined in section 181.85, the wages or commissions earned and unpaid at the time the
3.30 employee quits or resigns shall become due and payable within ~~five~~ three days thereafter.

4.1 Sec. 7. Minnesota Statutes 2022, section 181.635, subdivision 1, is amended to read:

4.2 Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

4.3 (a) "Employer" means a person who employs another to perform a service for hire.

4.4 Employer includes any agent or attorney of an employer who, for money or other valuable
4.5 consideration paid or promised to be paid, performs any recruiting.

4.6 (b) "Person" means a corporation, partnership, limited liability company, limited liability
4.7 partnership, association, individual, or group of persons.

4.8 (c) "Recruits" means to induce an individual, directly or through an agent, to relocate
4.9 to Minnesota or within Minnesota to work in food processing by an offer of employment
4.10 or of the possibility of employment.

4.11 (d) "Food processing" means canning, packing, or otherwise processing poultry or meat
4.12 for consumption.

4.13 (e) "Terms and conditions of employment" means the following:

4.14 (1) nature of the work to be performed;

4.15 (2) wage rate, nature and amount of deductions for tools, clothing, supplies, or other
4.16 items;

4.17 (3) anticipated hours of work per week, including overtime;

4.18 (4) anticipated slowdown or shutdown or if hours of work per week vary more than 25
4.19 percent from clause (3);

4.20 (5) duration of the work;

4.21 (6) workers' compensation coverage and name, address, and telephone number of insurer
4.22 and Department of Labor and Industry;

4.23 (7) employee benefits available, including any health plans, sick leave, or paid vacation;

4.24 (8) transportation and relocation arrangements with allocation of costs between employer
4.25 and employee;

4.26 (9) availability and description of housing and any costs to employee associated with
4.27 housing; and

4.28 (10) any other item of value offered, and allocation of costs of item between employer
4.29 and employee.

5.1 Sec. 8. Minnesota Statutes 2022, section 181.635, subdivision 2, is amended to read:

5.2 Subd. 2. **Recruiting; required disclosure.** (a) An employer shall provide written
5.3 disclosure of the terms and conditions of employment to a person at the time it recruits the
5.4 person to relocate to work in the food processing industry. The disclosure requirement does
5.5 not apply to an exempt employee as defined in United States Code, title 29, section 213(a)(1).
5.6 The disclosure must be written in English and Spanish, or another language if the person's
5.7 preferred language is not Spanish, dated and signed by the employer and the person recruited,
5.8 and maintained by the employer for ~~two~~ three years. A copy of the signed and completed
5.9 disclosure must be delivered immediately to the recruited person. The disclosure may not
5.10 be construed as an employment contract.

5.11 (b) The requirements under this subdivision are in addition to the requirements under
5.12 section 181.032.

5.13 Sec. 9. Minnesota Statutes 2022, section 181.635, subdivision 3, is amended to read:

5.14 Subd. 3. **Civil action.** A person injured by a violation of this section has a cause of action
5.15 for damages for the greater of ~~\$500~~ \$1,000 per violation or twice their actual damages, plus
5.16 costs and reasonable attorney's fees. A damage award shall be the greater of ~~\$750~~ \$1,400
5.17 or three times actual damages for a person injured by an intentional violation of this section.

5.18 Sec. 10. Minnesota Statutes 2022, section 181.635, subdivision 4, is amended to read:

5.19 Subd. 4. **Fine.** The Department of Labor and Industry shall fine an employer not less
5.20 than ~~\$200~~ \$400 or more than ~~\$500~~ \$1,000 for each violation of this section. The fine shall
5.21 be payable to the employee aggrieved.

5.22 Sec. 11. Minnesota Statutes 2022, section 181.635, subdivision 6, is amended to read:

5.23 Subd. 6. **Standard disclosure form.** The Department of Labor and Industry shall provide
5.24 a standard form for use at the employer's option in making the disclosure required in
5.25 subdivision 2. The form shall be available in English and Spanish and additional languages
5.26 upon request.

5.27 Sec. 12. Minnesota Statutes 2022, section 181.85, subdivision 2, is amended to read:

5.28 Subd. 2. **Agricultural labor.** "Agricultural labor" means field labor associated with the
5.29 cultivation and harvest of fruits and vegetables and work performed in processing fruits and
5.30 vegetables for market, as well as labor performed in agriculture as defined in Minnesota
5.31 Rules, part 5200.0260.

6.1 Sec. 13. Minnesota Statutes 2022, section 181.85, subdivision 4, is amended to read:

6.2 Subd. 4. **Employer.** "Employer" means ~~a processor of fruits or vegetables~~ an individual,
 6.3 partnership, association, corporation, business trust, or any person or group of persons that
 6.4 employs, either directly or indirectly through a recruiter, ~~more than 30~~ one or more migrant
 6.5 workers ~~per day for more than seven days~~ in any calendar year.

6.6 Sec. 14. Minnesota Statutes 2022, section 181.86, subdivision 1, is amended to read:

6.7 Subdivision 1. **Terms.** (a) An employer that recruits a migrant worker shall provide the
 6.8 migrant worker, at the time the worker is recruited, with a written employment statement
 6.9 which shall state clearly and plainly, in English and Spanish, or another language if the
 6.10 worker's preferred language is not Spanish:

6.11 (1) the date on which and the place at which the statement was completed and provided
 6.12 to the migrant worker;

6.13 (2) the name and permanent address of the migrant worker, of the employer, and of the
 6.14 recruiter who recruited the migrant worker;

6.15 (3) the date on which the migrant worker is to arrive at the place of employment, the
 6.16 date on which employment is to begin, the approximate hours of employment, and the
 6.17 minimum period of employment;

6.18 (4) the crops and the operations on which the migrant worker will be employed;

6.19 (5) the wage rates to be paid;

6.20 (6) the payment terms, as provided in section 181.87;

6.21 (7) any deduction to be made from wages; ~~and~~

6.22 (8) whether housing will be provided; and

6.23 (9) when workers' compensation insurance coverage is required by chapter 176, the
 6.24 name of the employer's workers' compensation insurance carrier, the carrier's phone number,
 6.25 and the insurance policy number.

6.26 (b) The Department of Labor and Industry shall provide a standard employment statement
 6.27 form for use at the employer's option for providing the information required in subdivision
 6.28 1. The form shall be available in English and Spanish and additional languages upon request.

6.29 (c) The requirements under this subdivision are in addition to the requirements under
 6.30 section 181.032.

7.1 Sec. 15. Minnesota Statutes 2022, section 181.87, subdivision 2, is amended to read:

7.2 Subd. 2. **Biweekly pay.** The employer shall pay wages due to the migrant worker at
7.3 least every two weeks, except on termination, when the employer shall pay within three
7.4 days unless payment is required sooner pursuant to section 181.13.

7.5 Sec. 16. Minnesota Statutes 2022, section 181.87, subdivision 3, is amended to read:

7.6 Subd. 3. **Guaranteed hours.** The employer shall guarantee to each recruited migrant
7.7 worker a minimum of 70 hours pay for work in any two successive weeks and, should the
7.8 pay for hours actually offered by the employer and worked by the migrant worker provide
7.9 a sum of pay less than the minimum guarantee, the employer shall pay the migrant worker
7.10 the difference within three days after the scheduled payday for the pay period involved.
7.11 Payment for the guaranteed hours shall be at the hourly wage rate, if any, specified in the
7.12 employment statement, or the federal, state, or local minimum wage, whichever is ~~higher~~
7.13 highest. Any pay in addition to the hourly wage rate specified in the employment statement
7.14 shall be applied against the guarantee. This guarantee applies for the minimum period of
7.15 employment specified in the employment statement beginning with the date on which
7.16 employment is to begin as specified in the employment statement. The date on which
7.17 employment is to begin may be changed by the employer by written, telephonic, or
7.18 telegraphic notice to the migrant worker, at the worker's last known physical address or
7.19 email address, no later than ten days prior to the previously stated beginning date. The
7.20 migrant worker shall contact the recruiter to obtain the latest information regarding the date
7.21 upon which employment is to begin no later than five days prior to the previously stated
7.22 beginning date. This guarantee shall be reduced, when there is no work available for a period
7.23 of seven or more consecutive days during any two-week period subsequent to the
7.24 commencement of work, by five hours pay for each such day, when the unavailability of
7.25 work is caused by climatic conditions or an act of God, provided that the employer pays
7.26 the migrant worker, on the normal payday, the sum of ~~\$5~~ \$50 for each such day.

7.27 Sec. 17. Minnesota Statutes 2022, section 181.87, subdivision 7, is amended to read:

7.28 Subd. 7. **Statement itemizing deductions from wages.** The employer shall provide a
7.29 written statement at the time wages are paid clearly itemizing each deduction from wages.
7.30 The written statement shall also comply with all other requirements for an earnings statement
7.31 in section 181.032.

8.1 Sec. 18. Minnesota Statutes 2022, section 181.88, is amended to read:

8.2 **181.88 RECORD KEEPING.**

8.3 Every employer subject to the provisions of sections 181.85 to 181.90 shall maintain
 8.4 complete and accurate records ~~of the names of, the daily hours worked by, the rate of pay~~
 8.5 ~~for and the wages paid each pay period to~~ for every individual migrant worker recruited by
 8.6 that employer, as required by section 177.30 and shall ~~preserve the records~~ also maintain
 8.7 the employment statements required under section 181.86 for a period of at least three years.

8.8 Sec. 19. Minnesota Statutes 2022, section 181.89, subdivision 2, is amended to read:

8.9 Subd. 2. **Judgment; damages.** If the court finds that any defendant has violated the
 8.10 provisions of sections 181.86 to 181.88, the court shall enter judgment for the actual damages
 8.11 incurred by the plaintiff or the appropriate penalty as provided by this subdivision, whichever
 8.12 is greater. The court may also award court costs and a reasonable attorney's fee. The penalties
 8.13 shall be as follows:

8.14 (1) whenever the court finds that an employer has violated the record-keeping
 8.15 requirements of section 181.88, ~~\$50~~ \$200;

8.16 (2) whenever the court finds that an employer has recruited a migrant worker without
 8.17 providing a written employment statement as provided in section 181.86, subdivision 1,
 8.18 ~~\$250~~ \$800;

8.19 (3) whenever the court finds that an employer has recruited a migrant worker after having
 8.20 provided a written employment statement, but finds that the employment statement fails to
 8.21 comply with the requirement of section 181.86, subdivision 1 or section 181.87, ~~\$250~~ \$800;

8.22 (4) whenever the court finds that an employer has failed to comply with the terms of an
 8.23 employment statement which the employer has provided to a migrant worker or has failed
 8.24 to comply with any payment term required by section 181.87, ~~\$500~~ \$1,600;

8.25 (5) whenever the court finds that an employer has failed to pay wages to a migrant worker
 8.26 within a time period set forth in section 181.87, subdivision 2 or 3, ~~\$500~~ \$1,600; and

8.27 (6) whenever penalties are awarded, they shall be awarded severally in favor of each
 8.28 migrant worker plaintiff and against each defendant found liable.

9.1 Sec. 20. Minnesota Statutes 2022, section 181.89, is amended by adding a subdivision to
9.2 read:

9.3 Subd. 3. **Enforcement.** In addition to any other remedies available, the commissioner
9.4 may assess the penalties in subdivision 2 and provide the penalty to the migrant worker
9.5 aggrieved by the employer's noncompliance.