

A bill for an act

relating to labor; modifying provisions relating to employment; adding provisions to the Fair Labor Standards Act; providing penalties; amending Minnesota Statutes 2006, sections 177.23, subdivision 7; 177.27, subdivision 3, by adding a subdivision; 177.32, by adding a subdivision; Minnesota Statutes 2007 Supplement, section 177.27, subdivision 8; proposing coding for new law in Minnesota Statutes, chapter 177; repealing Minnesota Statutes 2006, section 177.32, subdivision 2.

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

Section 1. Minnesota Statutes 2006, section 177.23, subdivision 7, is amended to read:

Subd. 7. **Employee.** (a) "Employee" means any individual employed by an employer but does not include:

(1) two or fewer specified individuals employed at any given time in agriculture on a farming unit or operation who are paid a salary;

~~(2) any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week;~~

~~(3)~~ (2) an individual under 18 who is employed in agriculture on a farm to perform services other than corn detasseling or hand field work when one or both of that minor hand field worker's parents or physical custodians are also hand field workers;

~~(4)~~ (3) for purposes of section 177.24, an individual under 18 who is employed as a corn detasseler;

~~(5)~~ (4) any staff member employed on a seasonal basis by an organization for work in an organized resident or day camp operating under a permit issued under section 144.72;

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~~(6)~~ (5) any individual employed in a bona fide executive, administrative, or professional capacity, or a salesperson who conducts no more than 20 percent of sales on the premises of the employer;

~~(7)~~ (6) any individual who renders service gratuitously for a nonprofit organization;

~~(8)~~ (7) any individual who serves as an elected official for a political subdivision or who serves on any governmental board, commission, committee or other similar body, or who renders service gratuitously for a political subdivision;

~~(9)~~ (8) any individual employed by a political subdivision to provide police or fire protection services or employed by an entity whose principal purpose is to provide police or fire protection services to a political subdivision;

~~(10)~~ (9) any individual employed by a political subdivision who is ineligible for membership in the Public Employees Retirement Association under section 353.01, subdivision 2b, clause (1), (2), (4), or (9);

~~(11)~~ (10) any driver employed by an employer engaged in the business of operating taxicabs;

~~(12)~~ (11) any individual engaged in babysitting as a sole practitioner;

~~(13)~~ (12) for the purpose of section 177.25, any individual employed on a seasonal basis in a carnival, circus, fair, or ski facility;

~~(14)~~ (13) any individual under 18 working less than 20 hours per workweek for a municipality as part of a recreational program;

~~(15)~~ (14) any individual employed by the state as a natural resource manager 1, 2, or 3 (conservation officer);

~~(16)~~ (15) any individual in a position for which the United States Department of Transportation has power to establish qualifications and maximum hours of service under United States Code, title 49, section 31502;

~~(17)~~ (16) any individual employed as a seafarer. The term "seafarer" means a master of a vessel or any person subject to the authority, direction, and control of the master who is exempt from federal overtime standards under United States Code, title 29, section 213(b)(6), including but not limited to pilots, sailors, engineers, radio operators, firefighters, security guards, pursers, surgeons, cooks, and stewards;

~~(18)~~ (17) any individual employed by a county in a single-family residence owned by a county home school as authorized under section 260B.060 if the residence is an extension facility of that county home school, and if the individual as part of the employment duties resides at the residence for the purpose of supervising children as defined by section 260C.007, subdivision 4; or

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~~(19)~~ (18) nuns, monks, priests, lay brothers, lay sisters, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals, and other nonprofit institutions operated by the church or religious order.

(b) Whether a person is an independent contractor or an employee must be determined according to the standards of the federal Fair Labor Standards Act, United States Code, title 29, sections 201 to 219, but the burden of proof is on the party for whom the work is performed to show independent contractor status by clear and convincing evidence.

Sec. 2. **[177.258] FAILURE TO WITHHOLD STATE TAXES.**

In addition to any other penalties, each time that an employer fails to withhold taxes from an employee's wages and transfer the funds to the commissioner of revenue, the commissioner of revenue shall assess a \$500 fine against the employer.

Sec. 3. Minnesota Statutes 2006, section 177.27, subdivision 3, is amended to read:

Subd. 3. **Adequacy of records.** 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 and mediate a settlement with the employer. Where an employer has not maintained records containing the names, hours of employment, regular rate of pay, and gross wages for each employee, that failure raises a rebuttable presumption both in administrative and civil actions that the employer did not pay the required minimum wage rate.

Sec. 4. Minnesota Statutes 2006, section 177.27, is amended by adding a subdivision to read:

Subd. 6a. **Complaints.** Any person may file a complaint with the commissioner that the wages paid to an employee for whom a prevailing wage rate has been established are less than the prevailing wage rate. The commissioner shall investigate the matter and take any steps necessary to enforce the payment of the prevailing wage rate. The commissioner may review records regarding all of an employer's employees in order to protect the identity of an employee identified in the complaint and to determine whether a pattern of violations has occurred. The commissioner shall disclose a complaining employee's name only if it is necessary to further investigate a complaint allegation and only if the employee has consented in writing to the disclosure. The statute of limitations for a civil action against the employer must be tolled during the investigation.

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Sec. 5. Minnesota Statutes 2007 Supplement, section 177.27, subdivision 8, is amended to read:

Subd. 8. **Court actions; suits brought by private parties.** An employee or any other person injured by a violation of this chapter may bring a civil action seeking redress for a violation or violations of sections 177.21 to 177.44 directly to district court. An employer who pays an employee less than the wages and overtime compensation to which the employee is entitled under sections 177.21 to 177.44 is liable to the employee for the full amount of the wages, gratuities, and overtime compensation, less any amount the employer is able to establish was actually paid to the employee and for ~~an additional equal~~ twice that amount as liquidated damages. In addition, in an action under this subdivision the employee may seek damages and other appropriate relief provided by subdivision 7 and otherwise provided by law. An agreement between the employee and the employer to work for less than the applicable wage is not a defense to the action.

Sec. 6. **[177.315] INTIMIDATION OF WITNESS; PENALTY.**

(a) An employer or other person must not discharge or in any other manner discriminate or retaliate against an employee or other person for: (1) exercising any right under this chapter or any rules adopted under it; (2) providing assistance to an employee or information regarding the employee; or (3) testifying or planning to testify in any investigation or proceeding regarding the employee.

(b) Taking adverse action against a person within 90 days of a person's engaging in the activities in paragraph (a) raises a presumption that the action was retaliation, which may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons. A civil action to enforce this section may be maintained in any court of competent jurisdiction by the state or by any party injured by a violation of this section. An employer who retaliates against an employee or other person in violation of this section must pay \$1,000 for each week of violation or until legal judgment is final.

Sec. 7. **[177.316] TRANSPORTATION OF PROHIBITED GOODS; PENALTIES.**

A person who violates the prohibited goods transportation provision of United States Code, title 29, section 215(a)(1), is, in addition to any penalties under that section, subject to an action for injunctive relief by the commissioner or an injured party to stop the violation. A prevailing plaintiff shall recover the costs of the suit and reasonable attorney fees.

5.1 Sec. 8. **[177.317] LIABILITY OF SHAREHOLDERS FOR WAGES DUE TO**
5.2 **EMPLOYEES.**

5.3 The ten largest shareholders of a corporation are jointly and severally personally
5.4 liable for all debts, wages, or salaries due and owing to any of its employees for
5.5 services performed by them for the corporation. A civil action may be brought against
5.6 a shareholder liable for wages due under this chapter instead of and in addition to the
5.7 employer. The shareholders shall be determined by the fair value of their beneficial
5.8 interest at the beginning of the period during which any unpaid services are performed.

5.9 Sec. 9. Minnesota Statutes 2006, section 177.32, is amended by adding a subdivision
5.10 to read:

5.11 Subd. 3. **Calculation of violations.** For a violation of this chapter that continues for
5.12 more than a week, each week is considered a separate violation.

5.13 Sec. 10. **REPEALER.**

5.14 Minnesota Statutes 2006, section 177.32, subdivision 2, is repealed.