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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1104

02/01/2023 Authored by Koegel, Hemmingsen-Jaeger and Kotyza-Witthuhn
The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy
02/13/2023 Adoption of Report: Placed on the General Register
Read for the Second Time

1.1 A bill for an act
1.2 relating to labor and industry; modifying employer retaliation provisions; modifying
1.3 pregnancy accommodations; amending Minnesota Statutes 2022, sections 181.03,
1.4 subdivision 6; 181.172; 181.932, subdivision 1; 181.939; 181.940, subdivisions
1.5 2, 3; 181.941, subdivision 3; 181.9413; 181.942; 181.9436; 181.945, subdivision
1.6 3; 181.9456, subdivision 3; 181.956, subdivision 5; 181.964.

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

1.8 Section 1. Minnesota Statutes 2022, section 181.03, subdivision 6, is amended to read:

1.9 Subd. 6. Retaliation. An employer must shall not discharge, discipline, penalize, interfere
1.10 with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee
1.11 for asserting rights or remedies under this section, sections 177.21 to 177.44, 181.01 to
1.12 181.723, or 181.79, including, but not limited to, filing a complaint with the department or
1.13 telling the employer of the employee's intention to file a complaint. In addition to any other
1.14 remedies provided by law, an employer who violates this subdivision is liable for a civil
1.15 penalty of not less than \$700 nor more than \$3,000 per violation.

1.16 EFFECTIVE DATE. This section is effective July 1, 2023.

1.17 Sec. 2. Minnesota Statutes 2022, section 181.172, is amended to read:

1.18 181.172 WAGE DISCLOSURE PROTECTION.

1.19 (a) An employer shall not:

1.20 (1) require nondisclosure by an employee of his or her wages as a condition of
1.21 employment;

2.1 (2) require an employee to sign a waiver or other document which purports to deny an
 2.2 employee the right to disclose the employee's wages; or

2.3 (3) take any adverse employment action against an employee for disclosing the employee's
 2.4 own wages or discussing another employee's wages which have been disclosed voluntarily.

2.5 (b) Nothing in this section shall be construed to:

2.6 (1) create an obligation on any employer or employee to disclose wages;

2.7 (2) permit an employee, without the written consent of the employer, to disclose
 2.8 proprietary information, trade secret information, or information that is otherwise subject
 2.9 to a legal privilege or protected by law;

2.10 (3) diminish any existing rights under the National Labor Relations Act under United
 2.11 States Code, title 29; or

2.12 (4) permit the employee to disclose wage information of other employees to a competitor
 2.13 of their employer.

2.14 (c) An employer that provides an employee handbook to its employees must include in
 2.15 the handbook notice of employee rights and remedies under this section.

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

2.19 (e) An employee may bring a civil action against an employer for a violation of paragraph
 2.20 (a) or (d). If a court finds that an employer has violated paragraph (a) or (d), the court may
 2.21 order reinstatement, back pay, restoration of lost service credit, if appropriate, and the
 2.22 expungement of any related adverse records of an employee who was the subject of the
 2.23 violation.

2.24 **EFFECTIVE DATE.** This section is effective July 1, 2023.

2.25 Sec. 3. Minnesota Statutes 2022, section 181.932, subdivision 1, is amended to read:

2.26 Subdivision 1. **Prohibited action.** An employer shall not discharge, discipline, penalize,
 2.27 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against, ~~or~~
 2.28 ~~penalize~~ an employee regarding the employee's compensation, terms, conditions, location,
 2.29 or privileges of employment because:

2.30 (1) the employee, or a person acting on behalf of an employee, in good faith, reports a
 2.31 violation, suspected violation, or planned violation of any federal or state law or common

3.1 law or rule adopted pursuant to law to an employer or to any governmental body or law
3.2 enforcement official;

3.3 (2) the employee is requested by a public body or office to participate in an investigation,
3.4 hearing, inquiry;

3.5 (3) the employee refuses an employer's order to perform an action that the employee
3.6 has an objective basis in fact to believe violates any state or federal law or rule or regulation
3.7 adopted pursuant to law, and the employee informs the employer that the order is being
3.8 refused for that reason;

3.9 (4) the employee, in good faith, reports a situation in which the quality of health care
3.10 services provided by a health care facility, organization, or health care provider violates a
3.11 standard established by federal or state law or a professionally recognized national clinical
3.12 or ethical standard and potentially places the public at risk of harm;

3.13 (5) a public employee communicates the findings of a scientific or technical study that
3.14 the employee, in good faith, believes to be truthful and accurate, including reports to a
3.15 governmental body or law enforcement official; or

3.16 (6) an employee in the classified service of state government communicates information
3.17 that the employee, in good faith, believes to be truthful and accurate, and that relates to state
3.18 services, including the financing of state services, to:

3.19 (i) a legislator or the legislative auditor; or

3.20 (ii) a constitutional officer.

3.21 The disclosures protected pursuant to this section do not authorize the disclosure of data
3.22 otherwise protected by law.

3.23 **EFFECTIVE DATE.** This section is effective July 1, 2023.

3.24 Sec. 4. Minnesota Statutes 2022, section 181.939, is amended to read:

3.25 **181.939 NURSING MOTHERS, LACTATING EMPLOYEES, AND PREGNANCY**
3.26 **ACCOMMODATIONS.**

3.27 Subdivision 1. **Nursing mothers and lactating employees.** (a) An employer must
3.28 provide reasonable break times each day to an employee who needs to express breast milk
3.29 ~~for her infant child during the twelve months following the birth of the child.~~ The break
3.30 times ~~must, if possible, may~~ run concurrently with any break times already provided to the
3.31 employee. ~~An employer is not required to provide break times under this section if to do so~~

4.1 ~~would unduly disrupt the operations of the employer.~~ An employer shall not reduce an
4.2 employee's compensation for time used for the purpose of expressing milk.

4.3 (b) The employer must make reasonable efforts to provide a clean, private, and secure
4.4 room or other location, in close proximity to the work area, other than a bathroom or a toilet
4.5 stall, that is shielded from view and free from intrusion from coworkers and the public and
4.6 that includes access to an electrical outlet, where the employee can express milk in privacy.
4.7 The employer would be held harmless if reasonable effort has been made.

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

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

4.13 Subd. 2. **Pregnancy accommodations.** (a) An employer must provide reasonable
4.14 accommodations to an employee for health conditions related to pregnancy or childbirth
4.15 upon request, with the advice of a licensed health care provider or certified doula, unless
4.16 the employer demonstrates that the accommodation would impose an undue hardship on
4.17 the operation of the employer's business. A pregnant employee shall not be required to
4.18 obtain the advice of a licensed health care provider or certified doula, nor may an employer
4.19 claim undue hardship for the following accommodations: (1) more frequent or longer
4.20 restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. The
4.21 employee and employer shall engage in an interactive process with respect to an employee's
4.22 request for a reasonable accommodation. Reasonable accommodation may include but is
4.23 not limited to temporary transfer to a less strenuous or hazardous position, temporary leave
4.24 of absence, modification in work schedule or job assignments, seating, more frequent
4.25 ~~restroom breaks~~ or longer break periods, and limits to heavy lifting. Notwithstanding any
4.26 other provision of this subdivision, an employer shall not be required to create a new or
4.27 additional position in order to accommodate an employee pursuant to this subdivision and
4.28 shall not be required to discharge an employee, transfer another employee with greater
4.29 seniority, or promote an employee.

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

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

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

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

5.8 Subd. 3. **Notice to employees.** An employer shall inform employees of their rights under
5.9 this section at the time of hire and when an employee makes an inquiry about or requests
5.10 parental leave. Information must be provided in English and the primary language of the
5.11 employee as identified by the employee. An employer that provides an employee handbook
5.12 to its employees must include in the handbook notice of employee rights and remedies under
5.13 this section. The commissioner shall make available to employers the text to be included
5.14 in the notice required by this section.

5.15 **EFFECTIVE DATE.** This section is effective July 1, 2023.

5.16 Sec. 5. Minnesota Statutes 2022, section 181.940, subdivision 2, is amended to read:

5.17 Subd. 2. **Employee.** "Employee" means a person who performs services for hire for an
5.18 employer from whom a leave is requested under sections 181.940 to 181.944 ~~for:~~

5.19 ~~(1) at least 12 months preceding the request; and~~

5.20 ~~(2) for an average number of hours per week equal to one-half the full-time equivalent~~
5.21 ~~position in the employee's job classification as defined by the employer's personnel policies~~
5.22 ~~or practices or pursuant to the provisions of a collective bargaining agreement, during the~~
5.23 ~~12-month period immediately preceding the leave.~~

5.24 Employee includes all individuals employed ~~at any site owned or operated by the~~
5.25 employer but does not include an independent contractor.

5.26 **EFFECTIVE DATE.** This section is effective July 1, 2023.

5.27 Sec. 6. Minnesota Statutes 2022, section 181.940, subdivision 3, is amended to read:

5.28 Subd. 3. **Employer.** "Employer" means a person or entity that employs ~~21~~ one or more
5.29 employees ~~at at least one site, except that, for purposes of the school leave allowed under~~
5.30 ~~section 181.9412, employer means a person or entity that employs one or more employees~~
5.31 ~~in Minnesota. The term~~ and includes an individual, corporation, partnership, association,

6.1 business, trust, nonprofit organization, group of persons, state, county, town, city, school
6.2 district, or other governmental subdivision.

6.3 **EFFECTIVE DATE.** This section is effective July 1, 2023.

6.4 Sec. 7. Minnesota Statutes 2022, section 181.941, subdivision 3, is amended to read:

6.5 Subd. 3. **No employer retribution.** An employer shall not discharge, discipline, penalize,
6.6 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an
6.7 employee for requesting or obtaining a leave of absence as provided by this section.

6.8 **EFFECTIVE DATE.** This section is effective July 1, 2023.

6.9 Sec. 8. Minnesota Statutes 2022, section 181.9413, is amended to read:

6.10 **181.9413 SICK LEAVE BENEFITS; CARE OF RELATIVES.**

6.11 (a) An employee may use personal sick leave benefits provided by the employer for
6.12 absences due to an illness of or injury to the employee's child, as defined in section 181.940,
6.13 subdivision 4, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild,
6.14 grandparent, or stepparent, for reasonable periods of time as the employee's attendance may
6.15 be necessary, on the same terms upon which the employee is able to use sick leave benefits
6.16 for the employee's own illness or injury. This section applies only to personal sick leave
6.17 benefits payable to the employee from the employer's general assets.

6.18 (b) An employee may use sick leave as allowed under this section for safety leave,
6.19 whether or not the employee's employer allows use of sick leave for that purpose for such
6.20 reasonable periods of time as may be necessary. Safety leave may be used for assistance to
6.21 the employee or assistance to the relatives described in paragraph (a). For the purpose of
6.22 this section, "safety leave" is leave for the purpose of providing or receiving assistance
6.23 because of sexual assault, domestic abuse, or harassment or stalking. For the purpose of
6.24 this paragraph:

6.25 (1) "domestic abuse" has the meaning given in section 518B.01;

6.26 (2) "sexual assault" means an act that constitutes a violation under sections 609.342 to
6.27 609.3453 or 609.352; and

6.28 (3) "harass" and "stalking" have the meanings given in section 609.749.

6.29 (c) An employer may limit the use of safety leave as described in paragraph (b) or
6.30 personal sick leave benefits provided by the employer for absences due to an illness of or
6.31 injury to the employee's adult child, spouse, sibling, parent, mother-in-law, father-in-law,

7.1 grandchild, grandparent, or stepparent to no less than 160 hours in any 12-month period.

7.2 This paragraph does not apply to absences due to the illness or injury of a child, as defined
7.3 in section 181.940, subdivision 4.

7.4 (d) For purposes of this section, "personal sick leave benefits" means time accrued and
7.5 available to an employee to be used as a result of absence from work due to personal illness
7.6 or injury, but does not include short-term or long-term disability or other salary continuation
7.7 benefits.

7.8 (e) For the purpose of this section, "child" includes a stepchild and a biological, adopted,
7.9 and foster child.

7.10 (f) For the purpose of this section, "grandchild" includes a step-grandchild, and a
7.11 biological, adopted, and foster grandchild.

7.12 (g) This section does not prevent an employer from providing greater sick leave benefits
7.13 than are provided for under this section.

7.14 (h) An employer shall not discharge, discipline, penalize, interfere with, threaten, restrain,
7.15 coerce, or otherwise retaliate or discriminate against an employee for requesting or obtaining
7.16 a leave of absence under this section.

7.17 **EFFECTIVE DATE.** This section is effective July 1, 2023.

7.18 Sec. 9. Minnesota Statutes 2022, section 181.942, is amended to read:

7.19 **181.942 REINSTATEMENT AFTER LEAVE.**

7.20 Subdivision 1. **Comparable position.** (a) An employee returning from a leave of absence
7.21 under section 181.939 or 181.941 is entitled to return to employment in the employee's
7.22 former position or in a position of comparable duties, number of hours, and pay. An employee
7.23 returning from a leave of absence longer than one month must notify a supervisor at least
7.24 two weeks prior to return from leave. An employee returning from a leave under section
7.25 181.9412 or 181.9413 is entitled to return to employment in the employee's former position.

7.26 (b) If, during a leave under sections ~~181.940~~ 181.939 to 181.944, the employer
7.27 experiences a layoff and the employee would have lost a position had the employee not
7.28 been on leave, pursuant to the good faith operation of a bona fide layoff and recall system,
7.29 including a system under a collective bargaining agreement, the employee is not entitled to
7.30 reinstatement in the former or comparable position. In such circumstances, the employee
7.31 retains all rights under the layoff and recall system, including a system under a collective
7.32 bargaining agreement, as if the employee had not taken the leave.

8.1 Subd. 2. **Pay; benefits; on return.** An employee returning from a leave of absence
 8.2 under sections ~~181.940~~ 181.939 to 181.944 is entitled to return to employment at the same
 8.3 rate of pay the employee had been receiving when the leave commenced, plus any automatic
 8.4 adjustments in the employee's pay scale that occurred during leave period. The employee
 8.5 returning from a leave is entitled to retain all accrued preleave benefits of employment and
 8.6 seniority, as if there had been no interruption in service; provided that nothing in sections
 8.7 ~~181.940~~ 181.939 to 181.944 prevents the accrual of benefits or seniority during the leave
 8.8 pursuant to a collective bargaining or other agreement between the employer and employees.

8.9 Subd. 3. **Part-time return.** An employee, by agreement with the employer, may return
 8.10 to work part time during the leave period without forfeiting the right to return to employment
 8.11 at the end of the leave period, as provided in sections ~~181.940~~ 181.939 to 181.944.

8.12 **EFFECTIVE DATE.** This section is effective July 1, 2023.

8.13 Sec. 10. Minnesota Statutes 2022, section 181.9436, is amended to read:

8.14 **181.9436 POSTING OF LAW.**

8.15 The Division of Labor Standards and Apprenticeship shall develop, with the assistance
 8.16 of interested business and community organizations, an educational poster stating employees'
 8.17 rights under sections ~~181.940~~ 181.939 to 181.9436. The department shall make the poster
 8.18 available, upon request, to employers for posting on the employer's premises.

8.19 **EFFECTIVE DATE.** This section is effective July 1, 2023.

8.20 Sec. 11. Minnesota Statutes 2022, section 181.945, subdivision 3, is amended to read:

8.21 Subd. 3. **No employer sanctions.** An employer shall not discharge, discipline, penalize,
 8.22 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an
 8.23 employee for requesting or obtaining a leave of absence as provided by this section.

8.24 **EFFECTIVE DATE.** This section is effective July 1, 2023.

8.25 Sec. 12. Minnesota Statutes 2022, section 181.9456, subdivision 3, is amended to read:

8.26 Subd. 3. **No employer sanctions.** An employer shall not discharge, discipline, penalize,
 8.27 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an
 8.28 employee for requesting or obtaining a leave of absence as provided by this section.

8.29 **EFFECTIVE DATE.** This section is effective July 1, 2023.

9.1 Sec. 13. Minnesota Statutes 2022, section 181.956, subdivision 5, is amended to read:

9.2 Subd. 5. **Retaliation prohibited.** An employer ~~may~~ shall not discharge, discipline,
9.3 penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate
9.4 against an employee for asserting rights and remedies provided in sections 181.950 to
9.5 181.954.

9.6 **EFFECTIVE DATE.** This section is effective July 1, 2023.

9.7 Sec. 14. Minnesota Statutes 2022, section 181.964, is amended to read:

9.8 **181.964 RETALIATION PROHIBITED.**

9.9 An employer ~~may~~ shall not discharge, discipline, penalize, interfere with, threaten,
9.10 restrain, coerce, or otherwise retaliate or discriminate against an employee for asserting
9.11 rights or remedies provided in sections 181.960 to 181.965.

9.12 **EFFECTIVE DATE.** This section is effective July 1, 2023.