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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1859

- 02/16/2023 Authored by Feist, Berg, Curran, Frazier, Finke and others
- 03/06/2023 The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy
- 03/06/2023 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
- 03/20/2023 Adoption of Report: Amended and re-referred to the Committee on State and Local Government Finance and Policy

1.1 A bill for an act

1.2 relating to labor; creating new enforcement provisions for construction workers

1.3 wage protection; amending Minnesota Statutes 2022, sections 177.27, subdivisions

1.4 1, 4, 8, 9, 10; 181.171, subdivision 4; proposing coding for new law in Minnesota

1.5 Statutes, chapter 181.

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

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

1.8 Subdivision 1. **Examination of records.** The commissioner may enter during reasonable

1.9 office hours or upon request and inspect the place of business or employment of any employer

1.10 of employees working in the state, to examine and inspect books, registers, payrolls, and

1.11 other records of any employer that in any way relate to wages, hours, and other conditions

1.12 of employment of any employees. The commissioner may transcribe any or all of the books,

1.13 registers, payrolls, and other records as the commissioner deems necessary or appropriate

1.14 and may question the employees to ascertain compliance with sections 177.21 to 177.435

1.15 and 181.165. The commissioner may investigate wage claims or complaints by an employee

1.16 against an employer if the failure to pay a wage may violate Minnesota law or an order or

1.17 rule of the department.

1.18 Sec. 2. Minnesota Statutes 2022, section 177.27, subdivision 4, is amended to read:

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

1.20 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,

1.21 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.275,

1.22 subdivision 2a, 181.722, 181.79, and 181.939 to 181.943, and 181.165 or with any rule

1.23 promulgated under section 177.28. The commissioner shall issue an order requiring an

2.1 employer to comply with sections 177.41 to 177.435 or 181.165 if the violation is repeated.  
2.2 For purposes of this subdivision only, a violation is repeated if at any time during the two  
2.3 years that preceded the date of violation, the commissioner issued an order to the employer  
2.4 for violation of sections 177.41 to 177.435 or 181.165 and the order is final or the  
2.5 commissioner and the employer have entered into a settlement agreement that required the  
2.6 employer to pay back wages that were required by sections 177.41 to 177.435. The  
2.7 department shall serve the order upon the employer or the employer's authorized  
2.8 representative in person or by certified mail at the employer's place of business. An employer  
2.9 who wishes to contest the order must file written notice of objection to the order with the  
2.10 commissioner within 15 calendar days after being served with the order. A contested case  
2.11 proceeding must then be held in accordance with sections 14.57 to 14.69 or 181.165. If,  
2.12 within 15 calendar days after being served with the order, the employer fails to file a written  
2.13 notice of objection with the commissioner, the order becomes a final order of the  
2.14 commissioner.

2.15 Sec. 3. Minnesota Statutes 2022, section 177.27, subdivision 8, is amended to read:

2.16 Subd. 8. **Court actions; suits brought by private parties.** An employee may bring a  
2.17 civil action seeking redress for a violation or violations of sections 177.21 to 177.44 and  
2.18 181.165 directly to district court. An employer who pays an employee less than the wages  
2.19 and overtime compensation to which the employee is entitled under sections 177.21 to  
2.20 177.44 or a contractor that has assumed a subcontractor's liability as required by section  
2.21 181.165, is liable to the employee for the full amount of the wages, gratuities, and overtime  
2.22 compensation, less any amount the employer or contractor is able to establish was actually  
2.23 paid to the employee and for an additional equal amount as liquidated damages. In addition,  
2.24 in an action under this subdivision the employee may seek damages and other appropriate  
2.25 relief provided by subdivision 7 and otherwise provided by law. An agreement between the  
2.26 employee and the employer to work for less than the applicable wage is not a defense to  
2.27 the action.

2.28 Sec. 4. Minnesota Statutes 2022, section 177.27, subdivision 9, is amended to read:

2.29 Subd. 9. **District court jurisdiction.** Any action brought under subdivision 8 may be  
2.30 filed in the district court of the county wherein a violation or violations of sections 177.21  
2.31 to 177.44 or 181.165 are alleged to have been committed, where the respondent resides or  
2.32 has a principal place of business, or any other court of competent jurisdiction. The action  
2.33 may be brought by one or more employees.

3.1 Sec. 5. Minnesota Statutes 2022, section 177.27, subdivision 10, is amended to read:

3.2 Subd. 10. **Attorney fees and costs.** In any action brought pursuant to subdivision 8, the  
3.3 court shall order an employer who is found to have committed a violation or violations of  
3.4 sections 177.21 to 177.44 or 181.165 to pay to the employee or employees reasonable costs,  
3.5 disbursements, witness fees, and attorney fees.

3.6 Sec. 6. **[181.165] WAGE PROTECTION; CONSTRUCTION WORKERS.**

3.7 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have  
3.8 the meanings given.

3.9 (b) "Claimant" means any person claiming unpaid wages, fringe benefits, or resulting  
3.10 liquidated damages that are owed as required by law, including any applicable statute,  
3.11 regulation, rule, ordinance, government resolution or policy, contract, or other legal authority.

3.12 (c) "Commissioner" refers to the commissioner of labor and industry.

3.13 (d) "Construction contract" means a written or oral agreement for the construction,  
3.14 reconstruction, erection, alteration, remodeling, repairing, maintenance, moving, or  
3.15 demolition of any building, structure, or improvement, or relating to the excavation of or  
3.16 development or improvement to land. For purposes of this section, a construction contract  
3.17 shall not include a home improvement contract for the performance of a home improvement  
3.18 between a home improvement contractor and the owner of an owner-occupied dwelling,  
3.19 and a home construction contract for one- or two-family dwelling units except where such  
3.20 contract or contracts results in the construction of more than ten one- or two-family  
3.21 owner-occupied dwellings at one project site annually.

3.22 (e) "Contractor" means any person, firm, partnership, corporation, association, company,  
3.23 organization, or other entity, including a construction manager, general or prime contractor,  
3.24 joint venture, or any combination thereof, along with their successors, heirs, and assigns,  
3.25 which enters into a construction contract with an owner. An owner shall be deemed a  
3.26 contractor and liable as such under this section if said owner has entered into a construction  
3.27 contract with more than one contractor or subcontractor on any construction site.

3.28 (f) "Owner" means any person, firm, partnership, corporation, association, company,  
3.29 organization, or other entity, or a combination of any thereof, with an ownership interest,  
3.30 whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee or  
3.31 another interest or estate less than fee that causes a building, structure, or improvement,  
3.32 new or existing, to be constructed, reconstructed, erected, altered, remodeled, repaired,

4.1 maintained, moved, or demolished or that causes land to be excavated or otherwise developed  
4.2 or improved.

4.3 (g) "Subcontractor" means any person, firm, partnership, corporation, company,  
4.4 association, organization or other entity, or any combination thereof, that is a party to a  
4.5 contract with a contractor or party to a contract with the contractor's subcontractors at any  
4.6 tier to perform any portion of work within the scope of the contractor's construction contract  
4.7 with the owner, including where the subcontractor has no direct privity of contract with the  
4.8 contractor. When the owner is deemed a contractor, subcontractor also includes the owner's  
4.9 contractors.

4.10 Subd. 2. **Assumption of liability.** (a) A contractor entering into a construction contract  
4.11 shall assume and is liable for any unpaid wages, fringe benefits, and resulting liquidated  
4.12 damages owed to a claimant or third party acting on the claimant's behalf by a subcontractor  
4.13 at any tier acting under, by, or for the contractor or its subcontractors for the claimant's  
4.14 performance of labor.

4.15 (b) A contractor or any other person shall not evade or commit any act that negates the  
4.16 requirements of this section. No agreement by an employee or subcontractor to indemnify  
4.17 a contractor or otherwise release or transfer liability assigned to a contractor under this  
4.18 section shall be valid except as otherwise provided herein. The provisions of this section  
4.19 do not prohibit a contractor or subcontractor from enforcing a contractual provision or other  
4.20 lawful remedies against a subcontractor for monetary damages incurred by the contractor  
4.21 pursuant to this section.

4.22 (c) A contractor shall not evade liability under this section by claiming that a person is  
4.23 an independent contractor rather than an employee of a subcontractor unless the person  
4.24 meets the criteria required by section 181.723, subdivision 4.

4.25 Subd. 3. **Enforcement.** (a) In the case of a complaint filed with the commissioner under  
4.26 section 177.27, subdivision 1, or a private civil action by an employee under section 177.27,  
4.27 subdivision 8, such employee may designate any person, organization, or collective  
4.28 bargaining agent authorized to file a complaint with the commissioner or in court pursuant  
4.29 to this section to make a wage claim on the claimant's behalf.

4.30 (b) In the case of an action against a subcontractor, the contractor shall be jointly and  
4.31 severally liable for any unpaid wages, benefits, and any other remedies available pursuant  
4.32 to this section.

4.33 (c) The attorney general may bring a civil action to collect unpaid wages and any other  
4.34 penalties, damages, costs, and fees on behalf of employees pursuant to this section.

5.1 (d) Claims shall be brought consistent with section 541.07, clause (5), for the initiation  
5.2 of such claim under this section in a court of competent jurisdiction or the filing of a  
5.3 complaint with the commissioner or attorney general. The provisions of this section do not  
5.4 diminish, impair, or otherwise infringe on any other right of an employee to bring an action  
5.5 or file a complaint against any employer.

5.6 Subd. 4. **Payroll records; data.** (a) Upon request by a contractor to a subcontractor, the  
5.7 subcontractor, and any other subcontractors hired under contract to the subcontractor shall  
5.8 provide payroll records, which, at minimum, contain all lawfully required information for  
5.9 all workers providing labor on the project. The payroll records shall contain sufficient  
5.10 information to apprise the contractor or subcontractor of such subcontractor's payment of  
5.11 wages and fringe benefit contributions to a third party on the workers' behalf. Payroll records  
5.12 shall be marked or redacted to an extent only to prevent disclosure of the employee's Social  
5.13 Security number.

5.14 (b) Upon request of a contractor or a contractor's subcontractor, any subcontractor that  
5.15 performs any portion of work within the scope of the contractor's construction contract with  
5.16 an owner shall provide:

5.17 (1) the names of all employees and independent contractors of the subcontractor on the  
5.18 project, including the names of all those designated as independent contractors and, when  
5.19 applicable, the name of the contractor's subcontractor with whom the subcontractor is under  
5.20 contract;

5.21 (2) the anticipated contract start date;

5.22 (3) the scheduled duration of work;

5.23 (4) when applicable, local unions with which such subcontractor is a signatory contractor;  
5.24 and

5.25 (5) the name and phone number of a contact for the subcontractor.

5.26 Failure to timely comply with a request for this information is a basis for a contractor to  
5.27 withhold payments owed to a subcontractor at any tier.

5.28 (c) Unless otherwise required by law, a contractor or subcontractor shall not disclose an  
5.29 individual's personal identifying information to the general public, except that the contractor  
5.30 or subcontractor can confirm that the individual works for them and provide the individual's  
5.31 full name.

6.1 Subd. 5. **Payments to contractors and subcontractors.** Nothing in this section shall  
6.2 alter the owner's obligation to pay a contractor, or a contractor's obligation to pay a  
6.3 subcontractor as set forth in section 337.10, except as expressly permitted by this section.

6.4 Subd. 6. **Exemptions.** (a) Nothing in this section shall be deemed to diminish the rights,  
6.5 privileges, or remedies of any employee under any collective bargaining agreement. This  
6.6 section shall not apply to any contractor or subcontractor that is a signatory to a bona fide  
6.7 collective bargaining agreement with a building and construction trade labor organization  
6.8 that: (1) contains a grievance procedure that may be used to recover unpaid wages on behalf  
6.9 of employees covered by the agreement; and (2) provides for collection of unpaid  
6.10 contributions to fringe benefit trust funds established pursuant to United States Code, title  
6.11 29, section 186, subsection (c), paragraphs (5) and (6), by or on behalf of such trust funds.

6.12 (b) This section does not apply to work for which prevailing wage rates apply under  
6.13 sections 177.41 to 177.44.

6.14 Sec. 7. Minnesota Statutes 2022, section 181.171, subdivision 4, is amended to read:

6.15 Subd. 4. **Employer; definition.** "Employer" means any person having one or more  
6.16 employees in Minnesota and includes the state or a contractor that has assumed a  
6.17 subcontractor's liability within the meaning of section 181.165 and any political subdivision  
6.18 of the state. This definition applies to this section and sections 181.02, 181.03, 181.031,  
6.19 181.032, 181.06, 181.063, 181.10, 181.101, 181.13, 181.14, and 181.16.

6.20 Sec. 8. **EFFECTIVE DATE.**

6.21 Sections 1 to 7 are effective August 1, 2023, and apply to contracts or agreements entered  
6.22 into, renewed, modified, or amended on or after that date.