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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3846

04/07/2016 Authored by Clark and Mariani

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to employment; workers' compensation; modifying wage theft
1.3 provisions; amending Minnesota Statutes 2014, sections 176.071; 181.13;
1.4 181.14, subdivisions 2, 3; Minnesota Statutes 2015 Supplement, sections
1.5 177.27, subdivision 4; 181.171, subdivision 1; proposing coding for new law in
1.6 Minnesota Statutes, chapter 181.

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

1.8 **ARTICLE 1**

1.9 **EMPLOYEE RIGHTS INFORMATION FOR NEW MINNESOTANS**

1.10 Section 1. Minnesota Statutes 2015 Supplement, section 177.27, subdivision 4, is
1.11 amended to read:

1.12 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an
1.13 employer to comply with sections 177.21 to 177.435, 181.003, 181.02, 181.03, 181.031,
1.14 181.032, 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or
1.15 (d), 181.275, subdivision 2a, 181.722, 181.79, and 181.939 to 181.943, or with any rule
1.16 promulgated under section 177.28. The commissioner shall issue an order requiring an
1.17 employer to comply with sections 177.41 to 177.435 if the violation is repeated. For
1.18 purposes of this subdivision only, a violation is repeated if at any time during the two years
1.19 that preceded the date of violation, the commissioner issued an order to the employer for
1.20 violation of sections 177.41 to 177.435 and the order is final or the commissioner and the
1.21 employer have entered into a settlement agreement that required the employer to pay back
1.22 wages that were required by sections 177.41 to 177.435. The department shall serve the
1.23 order upon the employer or the employer's authorized representative in person or by
1.24 certified mail at the employer's place of business. An employer who wishes to contest the

order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Sec. 2. **[181.003] TEMPORARY WORKER RIGHTS.**

Subdivision 1. **Definition.** For the purposes of this section, "employee leasing company" means a person or entity engaged in labor leasing, staff leasing, employee leasing, employee staffing or supply, or other arrangement, under contract or otherwise, whereby one person or entity leases or obtains employees from that person or entity.

Subd. 2. **Disclosures required.** (a) An employee leasing company must provide to each employee, upon assignment or placement or start of a temporary job, a written notice in English, Hmong, Somali, and Spanish, of the following:

(1) the name, address, and telephone number of: (i) the employee leasing company; (ii) the employee leasing company's workers' compensation carrier; (iii) the name, address, and telephone number of the work site employer; and (iv) the work site employer's workers' compensation carrier;

(2) a description of the position and whether the position will require any special clothing, equipment, training, or licenses and any costs to be charged to the employee for such supplies or training;

(3) the designated pay day, the hourly rate of pay, and whether and how overtime pay may occur;

(4) the daily starting time and anticipated end time and, when known, the expected duration of assignment, placement, or temporary job;

(5) whether any meals will be provided by the employee leasing company or work site employer and the charge, if any, to the employee;

(6) details regarding transportation to the work site and any fees charged to the employee by the employee leasing company or work site employer for any transportation services; and

(7) the written notice described in section 181.004.

(b) The employee leasing company, work site employer, or temporary employer must post the written notice required under paragraph (a) in a conspicuous place in any areas where an employee is likely to see and have time to read the notice.

Sec. 3. **[181.004] CREATION OF MATERIALS.**

(a) The commissioner of labor and industry must create, no later than January 1, 2017, a written notice including short and simple explanations, in English, Hmong, Somali, and Spanish, of the following:

(1) applicable federal and state minimum wage and overtime protections;

(2) Minnesota Occupational Health and Safety protections;

(3) Minnesota workers' compensation laws;

(4) Minnesota unemployment insurance laws; and

(5) contact information for the Department of Labor and Industry Labor Standards Division.

(b) The commissioner must provide an electronic copy of the notice on the department's Web site.

(c) The commissioner must update the notice as necessary to reflect changes in the law.

ARTICLE 2

WORKERS' COMPENSATION REFORM

Section 1. Minnesota Statutes 2014, section 176.071, is amended to read:

176.071 JOINT EMPLOYERS; CONTRIBUTION.

(a) The provisions in this paragraph do not apply to the joint employers described in paragraph (b). When compensation is payable under this chapter for the injury or death of an employee employed and paid jointly by two or more employers at the time of the injury or death these employers shall contribute to the payment of the compensation in the proportion of their wage liabilities to the employee. If any such employer is excluded from the provisions of this chapter and is not liable for compensation, the liability of those employers who are liable for compensation is the proportion of the entire compensation which their wage liability bears to the employee's entire wages. As between themselves such employers may arrange for a different distribution of payment of the compensation for which they are liable.

(b) The provisions of this paragraph apply to employers, joint or otherwise, that are employee leasing entities, as described in section 79.255, or any other type of employee leasing entity or temporary staffing entity. When compensation is payable under this chapter for the injury or death of an employee of such an employer, that employer is liable for payment of the entire compensation. Such employers may seek indemnification from joint employers for the portion of the compensation equal to the proportion of any joint employers' wage liabilities to the employee that would otherwise apply.

ARTICLE 3**WAGE THEFT**

Section 1. Minnesota Statutes 2014, section 181.13, is amended to read:

181.13 PENALTY FOR FAILURE TO PAY WAGES PROMPTLY.

(a) When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater. If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default. In addition to recovering the wages and commissions actually earned and unpaid, the discharged employee may charge and collect a penalty equal to the amount of four times the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for each day up to ~~15~~ 100 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made. In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment does not commence until the date of the first regular or special meeting of the governing board following discharge of the employee. An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions. An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other related remedies as provided in this section.

(b) The wages and commissions must be paid in the usual manner of payment unless the employee requests that the wages and commissions be sent through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions are paid as of the date of their postmark.

5.1 Sec. 2. Minnesota Statutes 2014, section 181.14, subdivision 2, is amended to read:

5.2 Subd. 2. **Nonprompt payment.** Wages or commissions not paid within the required
5.3 time period shall become immediately payable upon the demand of the employee. If the
5.4 employee's earned wages or commissions are not paid within 24 hours after the demand,
5.5 the employer shall be liable to the employee for a penalty equal to four times the amount
5.6 of the employee's average daily earnings at the employee's regular rate of pay or the rate
5.7 required by law, whichever rate is greater, for every day, not exceeding ~~15~~ 100 days in
5.8 all, until such payment or other settlement satisfactory to the employee is made. The
5.9 employer shall also be liable to the employee for the amount of wages and commissions
5.10 that are earned and unpaid. An employee's demand for payment under this section must
5.11 be in writing but need not state the precise amount of unpaid wages or commissions. An
5.12 employee may directly seek and recover payment from an employer under this section even
5.13 if the employee is not a party to a contract that requires the employer to pay the employee
5.14 at the rate of pay demanded by the employee, so long as the contract or any applicable
5.15 statute, regulation, rule, ordinance, government resolution or policy, or other legal
5.16 authority requires payment to the employee at the particular rate of pay. The employee
5.17 shall be able to directly seek payment at the highest rate of pay provided in the contract or
5.18 applicable law, and any other remedies related thereto as provided in this section.

5.19 Sec. 3. Minnesota Statutes 2014, section 181.14, subdivision 3, is amended to read:

5.20 Subd. 3. **Settlement of disputes.** If the employer disputes the amount of wages
5.21 or commissions claimed by the employee under the provisions of this section or section
5.22 181.13, and the employer makes a legal tender of the amount ~~which the employer~~
5.23 employee in good faith claims to be due, the employer shall not be liable for any sum
5.24 greater than the amount so tendered and interest thereon at the legal rate, unless, in an
5.25 action brought in a court having jurisdiction, the employee recovers a greater sum than the
5.26 amount so tendered with interest thereon; and if, in the suit, the employee fails to recover
5.27 a greater sum than that so tendered, with interest, the employee shall not pay the cost of
5.28 the suit, otherwise the cost shall be paid by the employer.

5.29 Sec. 4. Minnesota Statutes 2015 Supplement, section 181.171, subdivision 1, is
5.30 amended to read:

5.31 Subdivision 1. **Civil action; damages.** A person may bring a civil action seeking
5.32 redress for violations of sections 181.02, 181.03, 181.031, 181.032, 181.08, 181.09,
5.33 181.10, 181.101, 181.11, 181.13, 181.14, 181.145, and 181.15 directly to district court. An
5.34 employer who is found to have violated the above sections is liable to the aggrieved party

6.1 for the civil penalties or damages provided for in the section violated. An employer who is
6.2 found to have violated the above sections shall also be liable for compensatory damages and
6.3 other appropriate relief including but not limited to injunctive relief and punitive damages.

APPENDIX
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