

**SENATE  
STATE OF MINNESOTA  
NINETIETH SESSION**

**S.F. No. 2770**

(SENATE AUTHORS: TORRES RAY and Pappas)

DATE  
03/01/2018

D-PG  
6225

OFFICIAL STATUS  
Introduction and first reading  
Referred to Jobs and Economic Growth Finance and Policy

1.1 A bill for an act  
1.2 relating to employment; requiring written employment contracts; expanding  
1.3 employer obligation to provide workers' compensation and unemployment insurance  
1.4 contributions; prohibiting noncompete agreements for certain employees; regulating  
1.5 contracts for services for independent contractors; amending Minnesota Statutes  
1.6 2016, section 181.721; proposing coding for new law in Minnesota Statutes,  
1.7 chapters 181; 513; repealing Minnesota Statutes 2016, sections 181.55; 181.56;  
1.8 181.57.

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

1.10 Section 1. **[181.55] WRITTEN EMPLOYMENT CONTRACTS REQUIRED.**

1.11 Subdivision 1. **Written contract required.** Every employer in the state, whether public  
1.12 or private, must enter into a written employment contract with each employee at the  
1.13 commencement of employment.

1.14 Subd. 2. **Required terms.** (a) A contract required by this section must, at a minimum,  
1.15 contain the following terms:

1.16 (1) pay and other compensation the employee will receive, including the amount and  
1.17 whether paid hourly, by salary, or by other means;

1.18 (2) timing of employee pay;

1.19 (3) employer-provided benefits;

1.20 (4) grounds for employee termination;

1.21 (5) discipline and termination process;

1.22 (6) a grievance procedure by which the employee can contest any discipline or  
1.23 termination, subject to paragraph (b); and

2.1 (7) restrictive covenants that apply to the employee, subject to paragraph (c).

2.2 (b) An employee must be granted a right to be represented in the grievance process by  
 2.3 an individual or organization of the employee's choosing, at the employee's expense.

2.4 (c) Any restrictive covenants are subject to sections 181.987 to 181.989. If the contract  
 2.5 contains a restrictive covenant, the provision must be limited to restrictions on the employee  
 2.6 that are reasonable in scope or duration and must be reasonably necessary to protect the  
 2.7 employer's trade secrets, goodwill, or existing business relationships.

2.8 Subd. 3. **Exception.** This section does not apply to employees covered by a valid  
 2.9 collective bargaining agreement.

2.10 Subd. 4. **Construction.** This section must not be construed as diminishing any employee  
 2.11 right under common law, statute, or regulation.

2.12 Subd. 5. **Enforcement.** (a) The commissioner of labor and industry shall receive,  
 2.13 investigate, attempt to resolve, and enforce a complaint of a violation of this section in the  
 2.14 same manner that the commissioner attempts to resolve a complaint of a violation of the  
 2.15 Minnesota Fair Labor Standards Act, subject to paragraph (b).

2.16 (b) The commissioner shall impose a civil fine on any employer that violates this section  
 2.17 in an amount not to exceed \$5,000 for each employee aggrieved by the violation.

2.18 (c) In determining the amount of any civil fine under this subdivision, the commissioner  
 2.19 must consider the appropriateness of the fine to the size of the employer and the gravity of  
 2.20 the applicable violation.

2.21 Sec. 2. Minnesota Statutes 2016, section 181.721, is amended to read:

2.22 **181.721 CONSTRUCTION BID EQUITY.**

2.23 Subdivision 1. **Workers' compensation and unemployment contribution costs.** A  
 2.24 successful bidder on a project or agreement to provide landscaping or janitorial services  
 2.25 must provide coverage for workers' compensation and unemployment benefits for its  
 2.26 employees required under chapters 176 and 268, respectively, and other state and federal  
 2.27 laws.

2.28 Subd. 2. **Employee status.** ~~Employee~~ (a) Subject to paragraph (b), employee status shall  
 2.29 be determined using the same tests and in the same manner as employee status is determined  
 2.30 under the applicable workers' compensation and unemployment insurance program laws  
 2.31 and rules.

3.1 (b) Notwithstanding anything to the contrary, for the purposes of this chapter and chapter  
 3.2 177, successful bidders on a project or agreement to provide landscaping or janitorial services  
 3.3 are considered joint employers with any subcontracted person or persons employing those  
 3.4 providing the landscaping or janitorial services.

3.5 Subd. 3. **Scope.** This section applies to ~~any nonresidential project for the construction,~~  
 3.6 ~~repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation,~~  
 3.7 ~~replacement, or renovation of a building or structure.;~~

3.8 (1) any nonresidential project for the construction, repair, remodeling, alteration,  
 3.9 conversion, modernization, improvement, rehabilitation, replacement, or renovation of a  
 3.10 building or structure;

3.11 (2) any agreement between an employer and any person or persons for the labor of  
 3.12 employees employed primarily in occupations under North American Industry Classification  
 3.13 System code 561730 (landscaping services); or

3.14 (3) any agreement between an employer and any person or persons for the labor of  
 3.15 employees employed primarily in occupations under North American Industry Classification  
 3.16 System code 561720 (janitorial services).

3.17 Subd. 4. **Civil remedy.** A person injured by a violation of subdivision 1 may bring an  
 3.18 action for damages against the violator. There is a rebuttable presumption that a losing  
 3.19 bidder on a project or agreement to provide landscaping or janitorial services on which a  
 3.20 violation of subdivision 1 has occurred has suffered damages in an amount equal to the  
 3.21 profit it projected to make on its bid. The court may award attorney fees, costs, and  
 3.22 disbursements to a party recovering under this subdivision.

3.23 Subd. 5. **Penalty.** In addition to any other penalties provided by law for the failure to  
 3.24 obtain required workers' compensation coverage or the failure to make unemployment  
 3.25 benefits contributions, a person violating subdivision 1 is guilty of a misdemeanor.

3.26 Sec. 3. [181.987] DEFINITIONS.

3.27 Subdivision 1. **Applicability.** The definitions in this section apply to sections 181.988  
 3.28 to 181.989.

3.29 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of labor and industry.

3.30 Subd. 3. **Covenant not to compete.** "Covenant not to compete" means an agreement:

3.31 (1) between an employee and employer that restricts the employee from performing:

3.32 (i) any work for another employer for a specified time period;

4.1 (ii) any work in a specified geographical area; or

4.2 (iii) work for another employer that is similar to the employee's work for the employer  
 4.3 included as a party to the agreement; and

4.4 (2) that is entered into after the effective date of this act.

4.5 Subd. 4. **Employer.** "Employer" means any individual, partnership, association,  
 4.6 corporation, business trust, or any person or group of persons acting directly or indirectly  
 4.7 in the interest of an employer in relation to an employee.

4.8 Subd. 5. **Subaverage wage employee.** "Subaverage wage employee" means any  
 4.9 individual:

4.10 (1) employed by an employer and who earns fewer wages, as calculated under section  
 4.11 268.035, subdivision 29, than Minnesota's average annual wage, as calculated under section  
 4.12 268.035, subdivision 23, at the time of entering into a covenant not to compete with such  
 4.13 employer; or

4.14 (2) prospectively employed by an employer and who will earn fewer wages, as calculated  
 4.15 under section 268.035, subdivision 29, than Minnesota's average annual wage, as calculated  
 4.16 under section 268.035, subdivision 23, at the time of entering into a covenant not to compete  
 4.17 with such employer.

4.18 **Sec. 4. [181.988] PROHIBITING COVENANTS NOT TO COMPETE FOR**  
 4.19 **SUBAVERAGE WAGE EMPLOYEES.**

4.20 Subdivision 1. **In general.** No employer shall enter into a covenant not to compete with  
 4.21 a subaverage wage employee. Any covenant not to compete between an employer and a  
 4.22 subaverage wage employee is unenforceable against the employee.

4.23 Subd. 2. **Notice.** An employer who employs any subaverage wage employee shall post  
 4.24 notice of the provisions of this act in a conspicuous place on the premises of such employer.

4.25 **Sec. 5. [181.989] ENFORCEMENT.**

4.26 Subdivision 1. **In general.** The commissioner shall receive, investigate, attempt to  
 4.27 resolve, and enforce a complaint of a violation of section 181.988 in the same manner that  
 4.28 the commissioner attempts to resolve a complaint of a violation of the Minnesota Fair Labor  
 4.29 Standards Act, subject to subdivision 2.

4.30 Subd. 2. **Civil fine.** (a) The commissioner shall impose a civil fine:

5.1 (1) with respect to any employer who violates section 181.988, subdivision 1, in an  
5.2 amount not to exceed \$5,000 for each employee who was aggrieved by such violation; and

5.3 (2) with respect to any employer who violates section 181.721, subdivision 2, in an  
5.4 amount not to exceed \$5,000.

5.5 (b) In determining the amount of any civil fine under this subdivision, the commissioner  
5.6 shall consider the appropriateness of the fine to the size of the employer and the gravity of  
5.7 the applicable violation.

5.8 **Sec. 6. [513.78] CONTRACTS FOR SERVICES; EXCLUDING THOSE WITH**  
5.9 **EMPLOYEES.**

5.10 (a) Any contract for services, where the service provider is an individual but not an  
5.11 employee, must be in writing and contain, at a minimum, the following terms:

5.12 (1) the beginning and end dates of the agreement;

5.13 (2) the compensation for the services performed under the agreement;

5.14 (3) grounds for termination of the contract; and

5.15 (4) a concise, complete, and accurate summary of laws and regulations that would apply  
5.16 to the individual if the individual was an employee rather than an independent contractor.

5.17 (b) If the parties fail to enter into a written contract as required by this section, the  
5.18 agreement is unenforceable only against the individual service provider but may be enforced  
5.19 against another party or parties by the individual service provider.

5.20 **Sec. 7. REPEALER.**

5.21 Minnesota Statutes 2016, sections 181.55; 181.56; and 181.57, are repealed.

**181.55 WRITTEN STATEMENT TO EMPLOYEES BY EMPLOYERS.**

When a contract of employment is consummated between an employer and an employee for work to be performed in this state, or for work to be performed in another state for an employer localized in this state, the employer shall give to the employee a written and signed agreement of hire, which shall clearly and plainly state:

- (1) the date on which the agreement was entered into;
- (2) the date on which the services of the employee are to begin;
- (3) the rate of pay per unit of time, or of commission, or by the piece, so that wages due may be readily computed;
- (4) the number of hours a day which shall constitute a regular day's work, and whether or not additional hours the employee is required to work shall constitute overtime and be paid for, and, if so, the rate of pay for overtime work; and
- (5) a statement of any special responsibility undertaken by the employee, not forbidden by law, which, if not properly performed by the employee, will entitle the employer to make deductions from the wages of the employee, and the terms upon which such deductions may be made.

**181.56 NO STATEMENT GIVEN; BURDEN OF PROOF.**

Where no such written agreement is entered into the burden of proof shall be upon the employer to establish the terms of the verbal agreement in case of a dispute with the employee as to its terms.

**181.57 APPLICATION OF SECTIONS 181.55 AND 181.56.**

Sections 181.55 and 181.56 shall not apply to farm labor, nor to casual employees temporarily employed, nor employers employing less than ten employees.