

CHAPTER 177

LABOR STANDARDS AND WAGES

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Subd. 8. [Repealed, 1971 c 874 s 5]

Subd. 9. [Repealed, 1973 c 721 s 16]

177.03 [Repealed, 1973 c 721 s 16]

177.04 [Repealed, 1973 c 721 s 16]

177.05 [Repealed, 1973 c 721 s 16]

177.06 [Repealed, 1973 c 721 s 16]

177.07 [Repealed, 1973 c 721 s 16]

177.075 [Repealed, 1973 c 721 s 16]

177.08 [Repealed, 1973 c 721 s 16]

177.09 [Repealed, 1973 c 721 s 16]

177.10 [Repealed, 1973 c 721 s 16]

- 177.11 [Repealed, 1973 c 721 s 16]
177.12 [Repealed, 1973 c 721 s 16]
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177.17 [Repealed, 1973 c 721 s 16]
177.18 [Repealed, 1965 c 45 s 73]
177.19 [Repealed, 1973 c 721 s 16]
177.20 [Repealed, 1973 c 721 s 16]
177.201 MS 2006 [Renumbered 15.001]

FAIR LABOR STANDARDS ACT

177.21 CITATION; FAIR LABOR STANDARDS ACT.

Sections 177.21 to 177.35 may be cited as the "Minnesota Fair Labor Standards Act."

History: 1973 c 721 s 1; 1984 c 628 art 4 s 1

177.22 STATEMENT OF PURPOSE.

The purpose of the Minnesota Fair Labor Standards Act is (1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities.

History: 1973 c 721 s 2; 1984 c 628 art 4 s 1

177.23 DEFINITIONS.

Subdivision 1. **Scope.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of sections 177.21 to 177.35, have the meanings given to them in this section.

Subd. 2. **Department.** "Department" means the Department of Labor and Industry.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of labor and industry or authorized designee or representative.

Subd. 4. **Wage.** "Wage" means compensation due to an employee by reason of employment, payable in:

- (1) legal tender of the United States;

(2) check on banks convertible into cash on demand at full face value;

(3) except for instances of written objection to the employer by the employee, direct deposit to the employee's choice of demand deposit account; or

(4) an electronic fund transfer to a payroll card account that meets all of the requirements of section 177.255, subject to allowances permitted by rules of the department under section 177.28.

Subd. 5. **Employ.** "Employ" means to permit to work.

Subd. 6. **Employer.** "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

Subd. 7. **Employee.** "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) 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) for purposes of section 177.24, an individual under 18 who is employed as a corn detasseler;

(5) 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;

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

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

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

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

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

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

(16) 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) 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) 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

(19) 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.

Subd. 8. **Occupation.** "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

Subd. 9. **Gratuities.** "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge is not the property of the employee.

Subd. 10. **On-site employee; hours worked.** With respect to any caretaker, manager, or other on-site employee of a residential building or buildings whose principal place of residence is in the residential building, including a caretaker, manager, or other on-site employee who receives a principal place of residence as full or partial compensation for duties performed for an employer, the term "hours worked" includes time when the caretaker, manager, or other on-site employee is performing any duties of employment, but does not mean time when the caretaker, manager, or other on-site employee is on the premises and available to perform duties of employment and is not performing duties of employment.

Subd. 11. **Companionship services; hours.** With respect to an individual who is (1) employed to provide companionship services to individuals who, because of age or infirmity, are unable to care for their own needs; (2) employed to stay overnight in the home of such an aged or infirm individual; and (3) paid the minimum wage or more for at least four hours associated with the overnight stay, the term "hours" for the purposes of requiring the payment of minimum wages and overtime premiums under sections 177.24 and 177.25, shall not include nighttime hours, from 10:00 p.m. to 9:00 a.m., up to a total of eight hours per night, during which the employee is available to perform duties for the aged or infirm individual, but is not in fact performing such

duties and is free to sleep and otherwise engage in normal private pursuits in the aged or infirm individual's home. For the purposes of this subdivision, the term "companionship services" is defined in Code of Federal Regulations, title 29, sections 552.6 and 552.106 as of March 1, 1984.

History: 1973 c 721 s 3; 1974 c 406 s 88; 1975 c 399 s 1; 1977 c 369 s 1; 1978 c 586 s 1; 1978 c 731 s 1; 1979 c 281 s 1; 1980 c 415 s 1; 1982 c 424 s 46-48; 1982 c 625 s 14; 1983 c 60 s 1; 1983 c 122 s 1; 1984 c 614 s 1; 1984 c 628 art 4 s 1; 1Sp1985 c 13 s 274,275; 1986 c 390 s 2; 1986 c 444; 1990 c 418 s 1; 1992 c 464 art 1 s 24; 1999 c 139 art 4 s 2; 2001 c 178 art 1 s 44; 2005 c 10 art 1 s 33; 2005 c 158 s 1,4; 2007 c 87 s 1; 2008 c 168 s 1

177.24 PAYMENT OF MINIMUM WAGES.

Subdivision 1. **Amount.** (a) For purposes of this subdivision, the terms defined in this paragraph have the meanings given them.

(1) "Large employer" means an enterprise whose annual gross volume of sales made or business done is not less than \$625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(2) "Small employer" means an enterprise whose annual gross volume of sales made or business done is less than \$625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(b) Except as otherwise provided in sections 177.21 to 177.35, every large employer must pay each employee wages at a rate of at least \$5.15 an hour beginning September 1, 1997, and at a rate of at least \$6.15 an hour beginning August 1, 2005. Every small employer must pay each employee at a rate of at least \$4.90 an hour beginning January 1, 1998, and at a rate of at least \$5.25 an hour beginning August 1, 2005.

(c) Notwithstanding paragraph (b), during the first 90 consecutive days of employment, an employer may pay an employee under the age of 20 years a wage of \$4.90 an hour. No employer may take any action to displace any employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the wage authorized in this paragraph.

Subd. 1a. [Expired]

Subd. 2. **Gratuities not applied.** No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage set by this section or federal law.

Subd. 3. **Sharing of gratuities.** For purposes of this chapter, any gratuity received by an employee or deposited in or about a place of business for personal services rendered by an employee is the sole property of the employee. No employer may require an employee to contribute or share a gratuity received by the employee with the employer or other employees or to contribute any or all of the gratuity to a fund or pool operated for the benefit of the employer or employees. This section does not prevent an employee from voluntarily sharing gratuities with other employees. The agreement to share gratuities must be made by the employees without employer coercion or participation, except that an employer may:

- (1) upon the request of employees, safeguard gratuities to be shared by employees and disburse shared gratuities to employees participating in the agreement;
- (2) report the amounts received as required for tax purposes; and
- (3) post a copy of this section for the information of employees.

The commissioner may require the employer to pay restitution in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the commissioner may make a determination of gratuities diverted based on available evidence and mediate a settlement with the employer.

Subd. 4. Unreimbursed expenses deducted. Deductions, direct or indirect, from wages or gratuities not authorized by this subdivision may only be taken as authorized by sections 177.28, subdivision 3, 181.06, and 181.79. Deductions, direct or indirect, for up to the full cost of the uniform or equipment as listed below, may not exceed \$50 or, if a motor vehicle dealer licensed under section 168.27 furnishes uniforms or clothing described in clause (1) on an ongoing basis, may not exceed the lesser of 50 percent of the dealer's reasonable expense or \$25 per month, including nonhome maintenance. No deductions, direct or indirect, may be made for the items listed below which when subtracted from wages would reduce the wages below the minimum wage:

(1) purchased or rented uniforms or specially designed clothing required by the employer, by the nature of the employment, or by statute as a condition of employment, which is not generally appropriate for use except in that employment;

(2) purchased or rented equipment used in employment, except tools of a trade, a motor vehicle, or any other equipment which may be used outside the employment;

(3) consumable supplies required in the course of that employment;

(4) travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

Subd. 5. Expense reimbursement. An employer, at the termination of an employee's employment, must reimburse the full amount deducted, directly or indirectly, for any of the items listed in subdivision 4, except for a motor vehicle dealer's rental and maintenance deduction for uniforms or clothing. When reimbursement is made, the employer may require the employee to surrender any existing items for which the employer provided reimbursement.

History: 1973 c 721 s 4; 1976 c 165 s 1; 1977 c 183 s 1; 1977 c 369 s 2; 1979 c 281 s 2; 1981 c 87 s 1,2; 1984 c 628 art 4 s 1; 1Sp1985 c 13 s 276-278; 1986 c 444; 1987 c 324 s 1; 1987 c 384 art 2 s 45; 1990 c 418 s 2-4; 1996 c 305 art 1 s 49,50; 2Sp1997 c 1 s 1; 2005 c 44 s 1; 2009 c 69 s 1,2; 2011 c 105 s 1

177.25 OVERTIME.

Subdivision 1. Compensation required. No employer may employ an employee for a workweek longer than 48 hours, unless the employee receives compensation for employment in excess of 48 hours in a workweek at a rate of at least 1-1/2 times the regular rate at which the employee is employed. The state of Minnesota or a political subdivision may grant time off at the rate of 1-1/2 hours for each hour worked in excess of 48 hours in a week in lieu of monetary compensation. An employer does not violate the overtime pay provisions of this section by employing any employees for a workweek in excess of 48 hours without paying the compensation for overtime employment prescribed (1) if the employee is employed under an agreement meeting the requirement of section 7(b)(2) of the Fair Labor Standards Act of 1938, as amended, or (2) if the employee is employed as a sugar beet hand laborer on a piece rate basis, provided that the regular rate of pay received per hour of work exceeds the applicable wage provided in section 177.24, subdivision 1 by at least 40 cents.

Subd. 2. **Health care exception.** An employer who operates a health care facility does not violate subdivision 1 if the employer and employee agree before performance of the work to accept a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for the purpose of overtime compensation and if for the employment in excess of eight hours in any workday and in excess of 80 hours in the 14-day period the employee receives compensation at a rate not less than 1-1/2 times the regular rate at which the employee is employed.

Subd. 3. **Motor vehicle salespeople; mechanics.** Subdivision 1 does not apply to any salesperson, parts person, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, or farm implements and paid on a commission or incentive basis, if employed by a nonmanufacturing establishment primarily engaged in selling the vehicles to ultimate purchasers.

Subd. 4. **Constructors of on-farm silos.** Subdivision 1 does not apply if the employee is employed in the construction of on-farm silos or the installation of appurtenant equipment on a unit or piece rate basis, if the regular rate of pay received per hour of work exceeds the applicable wage provided in section 177.24, subdivision 1.

Subd. 5. **Air carrier employees.** Subdivision 1 does not apply to employees of air carriers subject to the provisions of title II of the Railway Labor Act, when the hours worked by an employee in excess of 48 in a workweek are not required by the carrier, but are arranged through a voluntary agreement among employees to trade scheduled work hours.

History: 1973 c 721 s 5; 1981 c 289 s 1,3; 1Sp1981 c 4 art 4 s 30; 1983 c 60 s 2,3; 1983 c 95 s 1; 1984 c 628 art 4 s 1; 1986 c 444; 2011 c 11 s 1

177.251 RIDE SHARING NOT OVERTIME.

The provisions of this chapter relating to compensation for overtime and payment of a minimum wage do not apply to employees' time spent in ride-sharing arrangements as defined in section 169.011, subdivision 65.

History: 1983 c 311 s 10; 1984 c 628 art 4 s 1

177.253 MANDATORY WORK BREAKS.

Subdivision 1. **Rest breaks.** An employer must allow each employee adequate time from work within each four consecutive hours of work to utilize the nearest convenient restroom.

Subd. 2. **Collective bargaining agreement.** Nothing in this section prohibits employers and employees from establishing rest breaks different from those provided in this section pursuant to a collective bargaining agreement.

History: 1988 c 559 s 1

177.254 MANDATORY MEAL BREAK.

Subdivision 1. **Meal break.** An employer must permit each employee who is working for eight or more consecutive hours sufficient time to eat a meal.

Subd. 2. **Payment not required.** Nothing in this section requires the employer to pay the employee during the meal break.

Subd. 3. **Collective bargaining agreement.** Nothing in this section prohibits employers and employees from establishing meal periods different from those provided in this section pursuant to a collective bargaining agreement.

History: 1989 c 167 s 1

177.255 PAYROLL CARD ACCOUNTS.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Payroll card" means a card issued to an employee by an employer or other payroll card issuer to access funds from the employee's employee payroll card account.

(b) "Payroll card account" means an agreement providing that an employer pays each participating employee's wages by making an electronic fund transfer to an account, and participating employees receive a payroll card to access their funds.

(c) "Payroll card issuer" means an employer that issues a payroll card to an employee or a bank or other entity that issues a payroll card to an employee on behalf of the employer.

(d) "Offers a payroll card" includes both the direct offers by the employer and the employer distribution to employees of material describing a payroll card program prepared by a payroll card issuer other than the employer.

(e) "Free" means no fee is deducted from an employee's payroll card account or charged to the employee by the employer or the payroll card issuer.

(f) "Fee" means any and all fees, charges, surcharges, or costs.

Subd. 2. **Filing.** A payroll card issuer must file with the commissioner a notice containing:

- (1) the entity's true name;
- (2) any other names under which the entity conducts business;
- (3) the entity's address, which may not be a post office box; and
- (4) the entity's telephone number.

Subd. 3. **Ownership of wages.** Wages paid by electronic funds transferred to an employee's payroll card account must be owned by the employee.

Subd. 4. **Availability of wages.** An employee who chooses to be paid wages by electronic fund transfer to a payroll card account must be permitted to withdraw by a free transaction from the employee's payroll card account, an amount up to and including the total amount of the employee's entire net pay, as stated on the employee's earnings statement. The free transaction must be available to the employee on and after the employee's regular payday.

Subd. 5. **Written disclosure.** When offering an employee the option of being paid wages by electronic fund transfer to a payroll card account, the employer shall provide to the employee written disclosure in plain language of all the employee's wage payment options. The written disclosure shall state the terms and conditions of the payroll card account option, including, but not limited to, the requirements set forth in this section and a complete itemized list of all fees that may be deducted from the employee's payroll card account by the employer or card issuer. The disclosure must also state that third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer or issuers. For fees that may be deducted or charged by the employer or payroll card issuer, the dollar amount of each fee must be stated. A copy of the written disclosure must be provided to the employee.

Subd. 6. **Written consent.** The employer may initiate payment of wages to an employee by electronic fund transfer to a payroll card account only after the employee has voluntarily consented in writing to that method of payment. Consent to payment of wages by electronic fund transfer to a payroll card account shall not be a condition of hire or of continued employment.

The written consent signed by the employee must include the terms and conditions of the payroll card account option as provided in subdivision 5. A copy of the signed written consent must be provided to the employee and be retained by the employer.

Subd. 7. **Transactions; statements; fees.** The employer shall provide to the employee, upon the employee's written or oral request, one free transaction history each month that includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account.

Subd. 8. **No link to credit.** The payroll card or payroll card account shall not be linked to any form of credit including, but not limited to, a loan against future pay or a cash advance on future pay.

Subd. 9. **Personal information.** Unless the employee consents in writing to the use, information generated by the employee's possession or use of a payroll card or payroll card account may only be used to process transactions and administer the payroll card and the payroll card account.

Subd. 10. **Languages other than English.** An employer who offers a payroll card account option to an employee using materials in a language other than English, shall provide the written disclosure and written consent required by subdivisions 5 and 6, and all payroll card account agreements in that other language.

Subd. 11. **Change of wage payment method.** An employee who is being paid wages by electronic fund transfer to a payroll card account may request to be paid wages by another method that is allowed by law. Upon the employee's request to change the wage payment method, the employer shall provide a form on which the employee shall indicate the change. The employer shall, within 14 days of the employee's request, begin payment by a different allowable method.

Subd. 12. **Limitation on employer fees.** An employer may not charge an employee initiation, participation, loading, or other fees to receive wages payable in an electronic fund transfer to a payroll card account.

Subd. 13. **Prohibited deductions and charges.** Fees imposed by the employer or payroll card issuer that were not disclosed to the employee shall not be deducted from the employee's payroll card account or charged to the employee. Inactivity or dormancy fees shall not be deducted from an employee's payroll card account or charged to the employee.

Subd. 14. **Violations; penalty.** A violation of this section is subject to the penalty provided in section 177.32, subdivision 1.

History: 2005 c 158 s 2,4; 2007 c 87 s 1; 2008 c 168 s 1

177.26 DIVISION OF LABOR STANDARDS.

Subdivision 1. **Creation.** The Division of Labor Standards and Apprenticeship in the Department of Labor and Industry is supervised and controlled by the commissioner of labor and industry.

Subd. 2. **Powers and duties.** The Division of Labor Standards and Apprenticeship shall administer this chapter and chapters 178, 181, 181A, and 184.

Subd. 3. **Employees; transfer from Division of Women and Children.** All persons employed by the department in the Division of Women and Children are transferred to the

Division of Labor Standards. A transferred person does not lose rights acquired by reason of employment at the time of transfer.

History: 1973 c 721 s 6; 1984 c 628 art 4 s 1; 1986 c 444; 1992 c 438 s 1; 2003 c 128 art 11 s 2,3

177.27 POWERS AND DUTIES OF COMMISSIONER.

Subdivision 1. **Examination of records.** The commissioner may enter during reasonable office hours or upon request and inspect the place of business or employment of any employer of employees working in the state, to examine and inspect books, registers, payrolls, and other records of any employer that in any way relate to wages, hours, and other conditions of employment of any employees. The commissioner may transcribe any or all of the books, registers, payrolls, and other records as the commissioner deems necessary or appropriate and may question the employees to ascertain compliance with sections 177.21 to 177.435. The commissioner may investigate wage claims or complaints by an employee against an employer if the failure to pay a wage may violate Minnesota law or an order or rule of the department.

Subd. 2. **Submission of records; penalty.** The commissioner may require the employer of employees working in the state to submit to the commissioner photocopies, certified copies, or, if necessary, the originals of employment records which the commissioner deems necessary or appropriate. The records which may be required include full and correct statements in writing, including sworn statements by the employer, containing information relating to wages, hours, names, addresses, and any other information pertaining to the employer's employees and the conditions of their employment as the commissioner deems necessary or appropriate.

The commissioner may require the records to be submitted by certified mail delivery or, if necessary, by personal delivery by the employer or a representative of the employer, as authorized by the employer in writing.

The commissioner may fine the employer up to \$1,000 for each failure to submit or deliver records as required by this section. This penalty is in addition to any penalties provided under section 177.32, subdivision 1. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered.

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.

Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032, 181.101, 181.11, 181.12, 181.13, 181.14, 181.145, 181.15, 181.275, subdivision 2a, 181.722, and 181.79, or with any rule promulgated under section 177.28. The commissioner shall issue an order requiring an employer to comply with sections 177.41 to 177.435 if the violation is repeated. For purposes of this subdivision only, a violation is repeated if at any time during the two years that preceded the date of violation, the commissioner issued an order to the employer for violation of sections 177.41 to 177.435 and the order is final or the commissioner and the employer have entered into a settlement agreement that required the employer to pay back wages that were required by sections 177.41 to 177.435. The department shall serve the order upon the employer or the employer's authorized representative in person or by 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.

Subd. 5. **Civil actions.** The commissioner may bring an action in the district court where an employer resides or where the commissioner maintains an office to enforce or require compliance with orders issued under subdivision 4.

Subd. 6. [Repealed, 1996 c 386 s 13]

Subd. 7. **Employer liability.** If an employer is found by the commissioner to have violated a section identified in subdivision 4, or any rule adopted under section 177.28, and the commissioner issues an order to comply, the commissioner shall order the employer to cease and desist from engaging in the violative practice and to take such affirmative steps that in the judgment of the commissioner will effectuate the purposes of the section or rule violated. The commissioner shall order the employer to pay to the aggrieved parties back pay, gratuities, and compensatory damages, less any amount actually paid to the employee by the employer, and for an additional equal amount as liquidated damages. Any employer who is found by the commissioner to have repeatedly or willfully violated a section or sections identified in subdivision 4 shall be subject to a civil penalty of up to \$1,000 for each violation for each employee. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered. In addition, the commissioner may order the employer to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceeding, unless payment of costs would impose extreme financial hardship on the employer. If the employer is able to establish extreme financial hardship, then the commissioner may order the employer to pay a percentage of the total costs that will not cause extreme financial hardship. Costs include but are not limited to the costs of services rendered by the attorney general, private attorneys if engaged by the department, administrative law judges, court reporters, and expert witnesses as well as the cost of transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner's order from the date the order is signed by the commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow accounts for purposes of distributing damages.

Subd. 8. **Court actions; suits brought by private parties.** An employee 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 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.

Subd. 9. **District court jurisdiction.** Any action brought under subdivision 8 may be filed in the district court of the county wherein a violation or violations of sections 177.21 to 177.44 are alleged to have been committed, where the respondent resides or has a principal place

of business, or any other court of competent jurisdiction. The action may be brought by one or more employees.

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

History: 1973 c 721 s 7; 1982 c 424 s 49,130; 1983 c 209 s 1; 1984 c 628 art 4 s 1; 1Sp1985 c 13 s 279; 1986 c 444; 1987 c 329 s 21; 1987 c 384 art 2 s 1; 1996 c 386 s 1-6; 2007 c 46 s 1; 2007 c 135 art 3 s 4-8; 2009 c 78 art 5 s 2; 2013 c 85 art 2 s 2

177.28 POWER TO MAKE RULES.

Subdivision 1. **General authority.** The commissioner may adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rates established by sections 177.24 and 177.25.

Subd. 2. [Repealed, 1988 c 629 s 64]

Subd. 3. **Rules required.** The commissioner shall adopt rules under sections 177.21 to 177.35 defining and governing:

(1) salespeople who conduct no more than 20 percent of their sales on the premises of the employer;

(2) allowances as part of the wage rates for board, lodging, and other facilities or services furnished by the employer and used by the employees;

(3) bonuses;

(4) part-time rates;

(5) special pay for special or extra work;

(6) procedures in contested cases;

(7) other facilities or services furnished by employers and used by employees; and

(8) other special items usual in a particular employer-employee relationship.

Subd. 4. [Repealed, 1996 c 305 art 1 s 52]

Subd. 5. **Rules regarding people with disabilities.** In order to prevent curtailment of opportunities for employment, avoid undue hardship, and safeguard the minimum wage rates under sections 177.24 and 177.25, the department shall also issue rules providing for the employment of disabled workers at wages lower than the wage rates applicable under sections 177.24 and 177.25, under permits and for periods of time as specified therein. The rules must provide for the employment of learners and apprentices at wages lower than the wage rates applicable under sections 177.24 and 177.25, under permits and subject to limitations on number, proportion, length of learning period, occupations, and other conditions as the department may prescribe. The rules must provide that where a disabled person is performing or is being considered for employment where work must be performed which is equal to work performed by a nondisabled person, the disabled person must be paid the same wage as a nondisabled person with similar experience and skill.

Subd. 6. **Administrative Procedure Act to apply.** The rules are subject to the provisions of chapter 14.

History: 1973 c 721 s 8; 1976 c 165 s 2; 1977 c 369 s 3; 1982 c 424 s 50; 1984 c 628 art 4 s 1; 1984 c 636 s 1; 1Sp1985 c 13 s 280; 1986 c 444; 2005 c 56 s 1; 2007 c 135 art 3 s 9

177.29 JUDICIAL REVIEW.

Subdivision 1. **Appeal.** A person aggrieved by an administrative rule issued under section 177.28 may appeal in accordance with chapter 14.

Subd. 2. [Repealed, 1983 c 247 s 219]

Subd. 3. [Repealed, 1983 c 247 s 219]

History: 1973 c 721 s 9; 1982 c 424 s 51; 1983 c 247 s 75; 1984 c 628 art 4 s 1

177.295 [Repealed, 1985 c 248 s 35]

177.30 KEEPING RECORDS; PENALTY.

(a) Every employer subject to sections 177.21 to 177.44 must make and keep a record of:

- (1) the name, address, and occupation of each employee;
- (2) the rate of pay, and the amount paid each pay period to each employee;
- (3) the hours worked each day and each workweek by the employee;

(4) for each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks specifying for each employee: name; identifying number; prevailing wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs; and

(5) other information the commissioner finds necessary and appropriate to enforce sections 177.21 to 177.435. The records must be kept for three years in or near the premises where an employee works except each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the records must be kept for three years after the contracting authority has made final payment on the public works project.

(b) The commissioner may fine an employer up to \$1,000 for each failure to maintain records as required by this section. This penalty is in addition to any penalties provided under section 177.32, subdivision 1. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered.

History: 1973 c 721 s 10; 1982 c 424 s 52; 1983 c 209 s 2; 1984 c 628 art 4 s 1; 1987 c 329 s 21; 1996 c 386 s 7; 2007 c 135 art 3 s 10; 2009 c 78 art 5 s 3

177.31 POSTING OF LAW AND RULES; PENALTY.

Every employer subject to sections 177.21 to 177.44 must obtain and keep a summary of those sections, approved by the department, and copies of any applicable rules adopted under

those sections, or a summary of the rules. The employer must post the summaries in a conspicuous and accessible place in or about the premises in which any person covered by sections 177.21 to 177.44 is employed. The department shall furnish copies of the summaries and rules to employers without charge.

The commissioner may fine an employer up to \$200 for each failure to comply with this section. This penalty is in addition to any penalties provided by section 177.32, subdivision 1.

History: 1973 c 721 s 11; 1982 c 424 s 53; 1983 c 209 s 3; 1984 c 628 art 4 s 1; 1987 c 329 s 21; 2009 c 78 art 5 s 4

177.32 PENALTIES.

Subdivision 1. **Misdemeanors.** An employer who does any of the following is guilty of a misdemeanor:

(1) hinders or delays the commissioner in the performance of duties required under sections 177.21 to 177.435;

(2) refuses to admit the commissioner to the place of business or employment of the employer, as required by section 177.27, subdivision 1;

(3) repeatedly fails to make, keep, and preserve records as required by section 177.30;

(4) falsifies any record;

(5) refuses to make any record available, or to furnish a sworn statement of the record or any other information as required by section 177.27;

(6) repeatedly fails to post a summary of sections 177.21 to 177.44 or a copy or summary of the applicable rules as required by section 177.31;

(7) pays or agrees to pay wages at a rate less than the rate required under sections 177.21 to 177.44;

(8) refuses to allow adequate time from work as required by section 177.253; or

(9) otherwise violates any provision of sections 177.21 to 177.44.

Subd. 2. **Fine.** An employer shall be fined not less than \$700 nor more than \$3,000 if convicted of discharging or otherwise discriminating against any employee because:

(1) the employee has complained to the employer or to the department that wages have not been paid in accordance with sections 177.21 to 177.435;

(2) the employee has instituted or will institute a proceeding under or related to sections 177.21 to 177.435; or

(3) the employee has testified or will testify in any proceeding.

History: 1973 c 721 s 12; 1982 c 424 s 54; 1983 c 209 s 4; 1984 c 628 art 3 s 11; art 4 s 1; 1Sp1985 c 13 s 281; 1986 c 444; 1988 c 559 s 2; 2009 c 78 art 5 s 5

177.33 [Repealed, 1996 c 386 s 13]

177.34 [Repealed, 1996 c 310 s 1]

177.35 RIGHT OF COLLECTIVE BARGAINING.

Nothing in sections 177.21 to 177.35 limits the right of employees to bargain collectively with their employers through representatives of their own choosing to establish wages or other

conditions of work more favorable to the employees than those required by sections 177.21 to 177.35.

History: 1973 c 721 s 15; 1982 c 424 s 57; 1984 c 628 art 4 s 1

PREVAILING WAGES

177.41 STATE PROJECTS AND STATE HIGHWAY CONSTRUCTION; PUBLIC POLICY.

It is in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works be compensated according to the real value of the services they perform. It is therefore the policy of this state that wages of laborers, workers, and mechanics on projects financed in whole or part by state funds should be comparable to wages paid for similar work in the community as a whole.

History: 1973 c 724 s 1; 1975 c 191 s 1; 1984 c 628 art 4 s 1

177.42 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 177.41 to 177.44 the terms defined in this section have the meanings given them except where the context indicates otherwise.

Subd. 2. **Project.** "Project" means erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds.

Subd. 3. **Area.** "Area" means the county or other locality from which labor for any project is normally secured.

Subd. 4. **Prevailing hours of labor.** "Prevailing hours of labor" means the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week. The prevailing hours of labor may not be more than eight hours per day or more than 40 hours per week.

Subd. 5. **Hourly basic rate.** "Hourly basic rate" means the hourly wage paid to any employee.

Subd. 6. **Prevailing wage rate.** "Prevailing wage rate" means the hourly basic rate of pay plus the contribution paid to or for the largest number of workers engaged in the same class of labor within the area for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of:

(1) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and

(2) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

"Prevailing wage rate" includes, for the purposes of section 177.44, rental rates for truck hire paid to those who own and operate the truck.

The prevailing wage rate may not be less than a reasonable and living wage.

Subd. 7. **Employer.** "Employer" means an individual, partnership, association, corporation, business trust, or other business entity that hires a laborer, worker, or mechanic.

History: 1973 c 724 s 2; 1975 c 191 s 2; 1984 c 628 art 4 s 1; 2009 c 78 art 5 s 6,7

177.43 CONTRACTS FOR STATE PROJECTS; PENALTY.

Subdivision 1. **Hours of labor.** Any contract which provides for a project must state that:

(1) no laborer or mechanic employed directly on the project work site by the contractor or any subcontractor, agent, or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and

(2) a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

Subd. 2. **Exceptions.** This section does not apply to wage rates and hours of employment of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

Subd. 3. **Contract requirements.** The contract must specifically state the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay. The contracting authority shall incorporate into its proposals and all contracts the applicable wage determinations for the contract along with contract language provided by the commissioner of labor and industry to notify the contractor and all subcontractors of the applicability of sections 177.41 to 177.44. Failure to incorporate the determination or provided contract language into the contracts shall make the contracting authority liable for making whole the contractor or subcontractor for any increases in the wages paid, including employment taxes and reasonable administrative costs based on the appropriate prevailing wage due to the laborers or mechanics working on the project. The contract must also provide that the contracting agency shall demand, and the contractor and subcontractor shall furnish to the contracting agency, copies of any or all payrolls not more than 14 days after the end of each pay period. The payrolls must contain all the data required by section 177.30. The contracting authority may examine all records relating to wages paid laborers or mechanics on work to which sections 177.41 to 177.44 apply.

Subd. 4. **Determination by commissioner; posting; petition for reconsideration.** The prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in any project must be ascertained before the state asks for bids. The commissioner of labor and industry shall investigate as necessary to ascertain the information. Each contractor and subcontractor performing work on a public project shall keep the information posted on the project in at least one conspicuous place for the information of the employees working on the project. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings. A person aggrieved by a decision

of the commissioner after reconsideration may, within 20 days after the decision, petition the commissioner for a public hearing in the manner of a contested case under sections 14.57 to 14.61.

Subd. 5. Penalty. It is a misdemeanor for an officer or employee of the state to execute a contract for a project without complying with this section, or for a contractor, subcontractor, or agent to pay any laborer, worker, or mechanic employed directly on the project site a lesser wage for work done under the contract than the prevailing wage rate as stated in the contract. This misdemeanor is punishable by a fine of not more than \$700, or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day a violation of this section continues is a separate offense.

Subd. 6. Examination of records; investigation by the department. The Department of Labor and Industry shall enforce this section. The department may demand, and the contractor and subcontractor shall furnish to the department, copies of any or all payrolls. The department may examine all records relating to wages paid laborers or mechanics on work to which sections 177.41 to 177.44 apply. The department shall employ at least three investigators to perform on-site project reviews, receive and investigate complaints of violations of this section, and conduct training and outreach to contractors and contracting authorities for public works projects financed in whole or in part with state funds.

Subd. 6a. Prevailing wage violations. Upon issuing a compliance order to an employer pursuant to section 177.27, subdivision 4, for violation of sections 177.41 to 177.44, the commissioner shall issue a withholding order to the contracting authority ordering the contracting authority to withhold payment of sufficient sum to the prime or general contractor on the project to satisfy the back wages assessed or otherwise cure the violation, and the contracting authority must withhold the sum ordered until the compliance order has become a final order of the commissioner and has been fully paid or otherwise resolved by the employer.

During an investigation of a violation of sections 177.41 to 177.44 which the commissioner reasonably determines is likely to result in the finding of a violation of sections 177.41 to 177.44 and the issuance of a compliance order pursuant to section 177.27, subdivision 4, the commissioner may notify the contracting authority of the determination and the amount expected to be assessed and the contracting authority shall give the commissioner 90 days' prior notice of the date the contracting authority intends to make final payment.

Subd. 7. Applicability. This section does not apply to a contract, or work under a contract, under which:

- (1) the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it, or
- (2) the estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it.

History: 1973 c 724 s 3; 1975 c 191 s 3,4; 1976 c 331 s 37; 1982 c 424 s 130; 1984 c 628 art 3 s 11; art 4 s 1; 2007 c 135 art 3 s 11-14; 2009 c 78 art 5 s 8

177.435 FACILITY CONSTRUCTION; PREVAILING WAGE.

Construction of value-added agricultural product processing facility financed in whole or in part with a loan or grant provided under section 41A.035, 41B.044, or 41B.046 is a "project" as that term is defined in section 177.42, subdivision 2. Contracts for the construction or expansion of a value-added agricultural product processing facility that is a project under this section must

comply with section 177.43 if the loan or grant agreement was entered into on or after December 31, 1995.

History: 1995 c 220 s 113

177.44 HIGHWAY CONTRACTS; HOURS OF LABOR; WAGE RATES; PENALTY.

Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a contractor, subcontractor, agent, or other person doing or contracting to do all or part of the work under a contract based on bids as provided in Minnesota Statutes 1971, section 161.32, to which the state is a party, for the construction or maintenance of a highway, may not be permitted or required to work longer than the prevailing hours of labor unless the laborer or mechanic is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay of the laborer or mechanic. The laborer or mechanic must be paid at least the prevailing wage rate in the same or most similar trade or occupation in the area.

Subd. 2. **Applicability.** This section does not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products, or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply the processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

Subd. 3. **Investigations by Department of Labor and Industry.** The Department of Labor and Industry shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, so as to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of pay.

The department shall determine the nature of the equipment furnished by truck drivers who own and operate trucks on contract work to determine minimum rates for the equipment, and shall establish by rule minimum rates to be computed into the prevailing wage rate.

Subd. 4. **Certification of hours and rate.** The commissioner of labor and industry shall at least once a year certify the prevailing hours of labor, the prevailing wage rate, and the hourly basic rate of pay for all classes of laborers and mechanics referred to in subdivision 3 in each area. The certification must also include future hours and rates when they can be determined for classes of laborers and mechanics in an area. The certification must specifically state the effective dates of future hours and rates when they are certified. If a construction project extends into more than one area there shall be only one standard of hours of labor and wage rates for the entire project. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings. A person aggrieved by a decision of the commissioner after reconsideration may within 20 days after the decision petition the commissioner for a public hearing as in a contested case under sections 14.57 to 14.61. If the commissioner finds that a change in the certified prevailing hours of labor, prevailing wage rate, and the hourly basic rate of pay for a class of laborers or mechanics in any area is required, the commissioner may at any time certify that change.

Subd. 5. **Hours and rates to be posted.** The prevailing hours of labor, the prevailing wage rates, the hourly basic rates of pay, and classifications for all labor as certified by the commissioner

must be specifically stated in the proposals and contracts for each highway construction contract to which the state is a party. These hours, rates, and classifications, together with the provisions of subdivision 6, must be kept posted on the project by the employer in at least one conspicuous place for the information of employees working on the project.

Subd. 6. **Penalties.** A contractor, subcontractor, or agent who violates this section is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.

Whoever induces a job applicant or employee on any project subject to this section to give up or forgo any part of the wages to which entitled under the contract governing the project by threat not to employ, by threat of dismissal from employment, or by any other means may be fined not exceeding \$1,000 or imprisoned not more than one year or both.

Any employee under this section who knowingly permits the contractor or subcontractor to pay less than the prevailing wage rate set forth in the contract, or who gives up any part of the compensation to which entitled under the contract, may be fined not exceeding \$40 or imprisoned not more than 30 days or both. Each day any violation of this paragraph continues is a separate offense.

Subd. 7. **Department of Transportation to enforce.** The Department of Transportation shall require adherence to this section. The commissioner of transportation may demand and every contractor and subcontractor shall furnish copies of payrolls. The commissioner of transportation may examine all records relating to hours of work and the wages paid laborers and mechanics on work to which this section applies. Upon request of the Department of Transportation or upon complaint of alleged violation, the county attorney of the county in which the work is located shall investigate and prosecute violations in a court of competent jurisdiction.

History: 1973 c 724 s 4; 1975 c 191 s 5,6; 1976 c 166 s 7; 1976 c 331 s 38; 1982 c 424 s 130; 1984 c 628 art 4 s 1; 1986 c 444