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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1391

02/16/2017 Authored by Mahoney, Thissen, Pinto, Becker-Finn, Maye Quade and others
The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

1.1 A bill for an act
1.2 relating to employment; prohibiting wage theft; modifying payment of wages;
1.3 increasing civil and criminal penalties; allowing for administrative review;
1.4 appropriating money; amending Minnesota Statutes 2016, sections 177.27,
1.5 subdivision 2, by adding a subdivision; 177.30; 177.32, subdivision 1; 181.03,
1.6 subdivision 1, by adding subdivisions; 181.032; 181.101.

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

1.8 Section 1. Minnesota Statutes 2016, section 177.27, subdivision 2, is amended to read:

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

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

1.20 The commissioner may fine the employer up to \$1,000 \$10,000 for each failure to submit
1.21 or deliver records as required by this section. This penalty is in addition to any penalties
1.22 provided under section 177.32, subdivision 1. In determining the amount of a civil penalty
1.23 under this subdivision, the appropriateness of such penalty to the size of the employer's
1.24 business and the gravity of the violation shall be considered.

2.1 Sec. 2. Minnesota Statutes 2016, section 177.27, is amended by adding a subdivision to  
2.2 read:

2.3 Subd. 11. **Subpoenas.** In order to carry out the purposes of this section, the commissioner  
2.4 may issue subpoenas to compel persons to appear before the commissioner to give testimony  
2.5 and produce documents, apparatus, devices, equipment, or materials. Upon the application  
2.6 of the commissioner, a district court shall treat the failure of any person to obey a subpoena  
2.7 lawfully issued by the commissioner under this subdivision as a contempt of court.

2.8 Sec. 3. Minnesota Statutes 2016, section 177.30, is amended to read:

2.9 **177.30 KEEPING RECORDS; PENALTY.**

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

2.12 (1) the name, address, and occupation of each employee;

2.13 (2) the rate of pay, and the amount paid each pay period to each employee, including  
2.14 whether each employee is paid by the hour, shift, day, week, salary, piece, commission, or  
2.15 other;

2.16 (3) the hours worked each day and each workweek by the employee, including for all  
2.17 employees paid at piece rate, the number of pieces completed at each piece rate;

2.18 (4) any personnel policies provided to employees;

2.19 (5) a copy of the notice provided to each employee as required by section 181.032, clause  
2.20 (d);

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

2.31 ~~(5)~~ (7) other information the commissioner finds necessary and appropriate to enforce  
2.32 sections 177.21 to 177.435. The records must be kept for three years in ~~or near~~ the premises

3.1 where an employee works except each employer subject to sections 177.41 to 177.44, and  
3.2 while performing work on public works projects funded in whole or in part with state funds,  
3.3 the records must be kept for three years after the contracting authority has made final payment  
3.4 on the public works project.

3.5 (b) All records required to be kept under paragraph (a) must be readily available for  
3.6 inspection by the commissioner on the premises of employment during reasonable office  
3.7 hours under section 177.27, subdivision 1.

3.8 (c) The commissioner may fine an employer up to ~~\$1,000~~ \$10,000 for each failure to  
3.9 maintain records as required by this section. This penalty is in addition to any penalties  
3.10 provided under section 177.32, subdivision 1. In determining the amount of a civil penalty  
3.11 under this subdivision, the appropriateness of such penalty to the size of the employer's  
3.12 business and the gravity of the violation shall be considered.

3.13 Sec. 4. Minnesota Statutes 2016, section 177.32, subdivision 1, is amended to read:

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

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

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

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

3.21 (4) falsifies any record;

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

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

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

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

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

4.1 (b) An employer is guilty of a gross misdemeanor if the employer fails to pay any wages  
 4.2 due to an employee or employees under sections 177.21 to 177.44, and the total of any such  
 4.3 wages in relation to all affected employees is \$10,000 or more.

4.4 Sec. 5. Minnesota Statutes 2016, section 181.03, subdivision 1, is amended to read:

4.5 Subdivision 1. **Prohibited practices.** ~~An employer may not, directly or indirectly and~~  
 4.6 ~~with intent to defraud:~~ (a) No employer shall commit wage theft.

4.7 (b) For purposes of this section, wage theft is committed if:

4.8 (1) ~~cause~~ an employer has failed to pay an employee all wages to which that employee  
 4.9 is entitled;

4.10 (2) an employer directly or indirectly causes any employee to give a receipt for wages  
 4.11 for a greater amount than that actually paid to the employee for services rendered;

4.12 ~~(2)~~ (3) an employer directly or indirectly demand demands or receive receives from any  
 4.13 employee any rebate or refund from the wages owed the employee under contract of  
 4.14 employment with the employer; or

4.15 ~~(3)~~ (4) an employer in any manner make makes or attempt attempts to make it appear  
 4.16 that the wages paid to any employee were greater than the amount actually paid to the  
 4.17 employee; or

4.18 (5) an employer retaliates against an employee for asserting rights or remedies under  
 4.19 this section, including but not limited to filing a complaint with the Department of Labor  
 4.20 and Industry or telling the employer of intention to file a complaint.

4.21 Sec. 6. Minnesota Statutes 2016, section 181.03, is amended by adding a subdivision to  
 4.22 read:

4.23 Subd. 4. **Enforcement.** The commissioner may enforce this section. The use of an  
 4.24 enforcement provision in this section shall not preclude the use of any other enforcement  
 4.25 provision provided by law.

4.26 Sec. 7. Minnesota Statutes 2016, section 181.03, is amended by adding a subdivision to  
 4.27 read:

4.28 Subd. 5. **Citations.** The commissioner may issue a citation for failure to pay wages of  
 4.29 up to \$1,000 by serving the citation on the employer. The citation shall direct the employer  
 4.30 to pay to the commissioner any back pay, gratuities, and compensatory damages owed to  
 4.31 the employee within 15 days. The citation may require the employer to correct the violation,

5.1 may require the employer to cease and desist from committing the violation, and may assess  
5.2 a monetary penalty of up to \$1,000. In determining the amount of the monetary penalty,  
5.3 the commissioner shall consider the factors described in section 14.045, subdivision 3. If  
5.4 the citation includes a penalty assessment, then the penalty is due and payable on the date  
5.5 the citation becomes final. The commissioner shall vacate the citation if: (1) before the  
5.6 citation was issued, the employer paid to the employee the back pay, gratuities, and  
5.7 compensatory damages specified in the citation; and (2) within the five days after the citation  
5.8 is issued, the employer provides to the commissioner evidence acceptable to the  
5.9 commissioner that the employer made the payment described in clause (1).

5.10 Sec. 8. Minnesota Statutes 2016, section 181.03, is amended by adding a subdivision to  
5.11 read:

5.12 Subd. 6. **Administrative review.** (a) Within 15 days after the commissioner issues a  
5.13 citation under subdivision 5, the employer to whom the citation is issued may request an  
5.14 expedited hearing to review the citation. The request for hearing must be in writing and  
5.15 must be served on the commissioner at the address specified in the citation. If the employer  
5.16 does not request a hearing or if the employer's written request for hearing is not served on  
5.17 the commissioner by the 15th day after the commissioner issues the citation, the citation  
5.18 becomes a final order of the commissioner and is not subject to review by any court or  
5.19 agency. The hearing request must state the reasons for seeking review of the citation. The  
5.20 employer to whom the citation is issued and the commissioner are the parties to the expedited  
5.21 hearing. The commissioner must notify the employer to whom the citation is issued of the  
5.22 time and place of the hearing at least 15 days before the hearing. The hearing shall be  
5.23 conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this  
5.24 section. If a hearing has been held, the commissioner shall not issue a final order until at  
5.25 least five days after the date of the administrative law judge's report. Any person aggrieved  
5.26 by the administrative law judge's report may, within those five days, serve written comments  
5.27 to the commissioner on the report and the commissioner shall consider and enter the  
5.28 comments in the record. The commissioner's final order shall comply with sections 14.61,  
5.29 subdivision 2, and 14.62, subdivisions 1 and 2a, and may be appealed in the manner provided  
5.30 in sections 14.63 to 14.69.

5.31 (b) When an employer to whom a citation under subdivision 5 was issued requests an  
5.32 expedited hearing under paragraph (a), the employer is presumed to have committed each  
5.33 violation listed in the citation. The employer to whom the citation was issued may rebut  
5.34 this presumption by showing that the employer did not commit the violation.

6.1 Sec. 9. Minnesota Statutes 2016, section 181.03, is amended by adding a subdivision to  
6.2 read:

6.3 Subd. 7. **Effect on other laws.** Nothing in this section shall be construed to limit the  
6.4 application of other state or federal laws.

6.5 Sec. 10. Minnesota Statutes 2016, section 181.032, is amended to read:

6.6 **181.032 REQUIRED STATEMENT OF EARNINGS BY EMPLOYER; NOTICE**  
6.7 **TO EMPLOYEE.**

6.8 (a) At the end of each pay period, the employer shall provide each employee an earnings  
6.9 statement, either in writing or by electronic means, covering that pay period. An employer  
6.10 who chooses to provide an earnings statement by electronic means must provide employee  
6.11 access to an employer-owned computer during an employee's regular working hours to  
6.12 review and print earnings statements.

6.13 (b) The earnings statement may be in any form determined by the employer but must  
6.14 include:

6.15 (1) the name of the employee;

6.16 (2) the hourly rate or rates of pay (if applicable) and basis thereof, including whether  
6.17 the employee is paid by hour, shift, day, week, salary, piece, commission, or other method;

6.18 (3) allowances, if any, claimed pursuant to permitted meals and lodging;

6.19 (4) the total number of hours worked by the employee unless exempt from chapter 177;

6.20 ~~(4)~~ (5) the total amount of gross pay earned by the employee during that period;

6.21 ~~(5)~~ (6) a list of deductions made from the employee's pay;

6.22 ~~(6)~~ (7) the net amount of pay after all deductions are made;

6.23 ~~(7)~~ (8) the date on which the pay period ends; and

6.24 ~~(8)~~ (9) the legal name of the employer and the operating name of the employer if different  
6.25 from the legal name;

6.26 (10) the physical address of the employer's main office or principal place of business,  
6.27 and a mailing address if different; and

6.28 (11) the telephone number of the employer.

6.29 (c) An employer must provide earnings statements to an employee in writing, rather  
6.30 than by electronic means, if the employer has received at least 24 hours notice from an

7.1 employee that the employee would like to receive earnings statements in written form. Once  
 7.2 an employer has received notice from an employee that the employee would like to receive  
 7.3 earnings statements in written form, the employer must comply with that request on an  
 7.4 ongoing basis.

7.5 (d) At the start of employment, an employer shall provide each employee a written notice  
 7.6 containing the following information:

7.7 (1) the rate or rates of pay and basis thereof, including whether the employee is paid by  
 7.8 the hour, shift, day, week, salary, piece, commission, or other method;

7.9 (2) allowances, if any, claimed pursuant to permitted meals and lodging;

7.10 (3) paid vacation, sick time, or other paid time off accruals and terms of use;

7.11 (4) whether the employee is exempt from minimum wage, overtime, and other provisions  
 7.12 of chapter 177, and on what basis;

7.13 (5) a list of deductions that may be made from the employee's pay;

7.14 (6) the dates on which the pay periods start and end and the regularly scheduled payday;

7.15 (7) the legal name of the employer and the operating name of the employer if different  
 7.16 from the legal name;

7.17 (8) the physical address of the employer's main office or principal place of business, and  
 7.18 a mailing address if different; and

7.19 (9) the telephone number of the employer.

7.20 (e) The employer must keep a copy of the notice under paragraph (d) signed by each  
 7.21 employee acknowledging receipt of the notice. The notice must be provided to each employee  
 7.22 in English and in the employee's native language.

7.23 (f) An employer must provide the employee any written changes to the information  
 7.24 contained in the notice under paragraph (d) at least seven calendar days prior to the time  
 7.25 the changes take effect. The changes must be signed by the employee before the changes  
 7.26 go into effect. The employer must keep a signed copy of all notice of changes as well as  
 7.27 the initial notices under paragraph (d).

7.28 Sec. 11. Minnesota Statutes 2016, section 181.101, is amended to read:

7.29 **181.101 WAGES; HOW OFTEN PAID.**

7.30 (a) Except as provided in paragraph (b), every employer must pay all wages earned by  
 7.31 an employee at least once every ~~31~~ 16 days on a regular payday designated in advance by

8.1 the employer regardless of whether the employee requests payment at longer intervals.  
 8.2 ~~Unless paid earlier, the wages earned during the first half of the first 31-day pay period~~  
 8.3 ~~become due on the first regular payday following the first day of work.~~ Payment for the  
 8.4 first day of work must be received no later than the first regular payday after the first 16  
 8.5 calendar days of employment or within 31 calendar days of the first day of employment,  
 8.6 whichever comes first. If wages earned are not paid, the commissioner of labor and industry  
 8.7 or the commissioner's representative may demand payment on behalf of an employee. If  
 8.8 payment is not made within ~~ten~~ five days of demand, the commissioner may charge and  
 8.9 collect the wages earned and a penalty in the amount of the employee's average daily earnings  
 8.10 at the rate agreed upon in the contract of employment, not exceeding 15 days in all, for each  
 8.11 day beyond the ~~ten-day~~ five-day limit following the demand. Money collected by the  
 8.12 commissioner must be paid to the employee concerned. This section does not prevent an  
 8.13 employee from prosecuting a claim for wages. This section does not prevent a school district,  
 8.14 other public school entity, or other school, as defined under section 120A.22, from paying  
 8.15 any wages earned by its employees during a school year on regular paydays in the manner  
 8.16 provided by an applicable contract or collective bargaining agreement, or a personnel policy  
 8.17 adopted by the governing board. For purposes of this section, "employee" includes a person  
 8.18 who performs agricultural labor as defined in section 181.85, subdivision 2. For purposes  
 8.19 of this section, wages are earned on the day an employee works.

8.20 (b) An employer of a volunteer firefighter, as defined in section 424A.001, subdivision  
 8.21 10, a member of an organized first responder squad that is formally recognized by a political  
 8.22 subdivision in the state, or a volunteer ambulance driver or attendant must pay all wages  
 8.23 earned by the volunteer firefighter, first responder, or volunteer ambulance driver or attendant  
 8.24 at least once every 31 days, unless the employer and the employee mutually agree upon  
 8.25 payment at longer intervals.

8.26 Sec. 12. APPROPRIATION.

8.27 \$500,000 in fiscal year 2018 and \$500,000 in fiscal year 2019 are appropriated from the  
 8.28 general fund to the commissioner of labor and industry to address wage theft.