Nineteen Hundred Thirty-One

Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, construing the constitution, statutes, charters and court rules of Minnesota

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CHAPTER 23
Department of Labor and Industries

INDUSTRIAL COMMISSION

§4049. Terms defined.

Section 9193(3), limiting the time to sue for damages, "caused by a milldam," to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electric current to be distributed and sold to the public for lighting, heating and power purposes. Zamani v. O., 234NW457. See Dun. Dig. 5605(79), 5655.

§4050-1. Industrial commission to make study of conditions.—For the purpose of improving the State employment offices and other employment agencies under its supervision, and to enable it to more efficiently perform the duties imposed upon it, and in cooperation with the federal authorities in an intelligent, long-time employment program, the State Industrial Commission is hereby authorized to make a thorough, comprehensive, scientific and objective study of labor conditions and employment conditions, and to gather and record authentic and scientific data in relation thereto, and in this connection to operate a laboratory experiment or demonstration station or stations. (Act Jan. 29, 1931, c. 5, §1.)

§4050-2. May receive gifts.—The industrial commission is hereby authorized to receive and accept gifts or contributions of funds to be used in carrying out the purposes of Section 1 [§4050-1] hereof, and to assist in the supervision and conduct of said study, and to defray, in whole or in part, the cost of said work. (Act Jan. 29, 1931, c. 5, §2.)

§4050-3. Supervision of funds.—Any funds or contributions so made shall be under the exclusive supervision and control of said industrial commission, may be deposited in such bank or banks as it may select, and may be disbursed in such manner and for such purposes as said industrial commission shall determine, consistent however, with the provisions of this act and with the conditions and purposes of any such gift or contribution. (Act Jan. 29, 1931, c. 5, §3.)

Sec. 4 provides that the act shall take effect from and after its passage.

FOUNDRIES

§4075. Various definitions.

See §1630-4(12).

THE DEAF

§4094. Employment of children under fourteen years.—No child under fourteen (14) years of age shall be employed, permitted or suffered to work at any time, in or in connection with any factory, mill or workshop, or in any mine; or in the construction of any building, or about any engineering work; it shall be unlawful for any person, firm or corporation, to employ or exhibit any child under fourteen (14) years of age in any business or service whatever, during any part of the term during which the public schools of the district in which the child resides are in session. (As amended Apr. 18, 1929, c. 234, §1.)

No exception in favor of agricultural employment. Op. Atty. Gen., June 21, 1929.

§4100. Children under 16—Hours of employment—Posted notice.

The fact that the beneficiaries, the parents of the decedent, violated §§4100 and 4101 does not constitute contributory negligence as a matter of law so as to entitle defendants to judgment non obstante. Weber v. B., 234NW682. See Dun. Dig. 2616(10).

Applicable to agricultural employment. Op. Atty. Gen., June 21, 1929.

Op. Atty. Gen., Apr. 6, 1931; note under §§ 4103, 4106.

The provision of the Street Trades Law, Laws 1921, c. 318, §1, which permits children under 16 to sell papers after 7 o'clock at night, modifies this section. Op. Atty. Gen., Apr. 6, 1931.

The use of children under 16 in hotel entertainment after 7 P. M. is a violation of the Child Labor Law, in the absence of a proper permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

§4101. Penalties for violation.

Weber v. B., 234NW682; note under §4100.

§4103. Children under specified ages—Prohibited employments—Penalties.—No person shall employ or permit any child under the age of sixteen (16) years to serve or work as an employe of such person in any of the following occupations:

Sewing or adjusting belts used on machinery; oiling or assisting in oiling, wiping; or cleaning machinery; operating or assisting in operating circular or band saws, wood shapers, wood jointers, planers, sandpaper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood turning or boring machinery, stamping machines in sheet metal and tin-ware manufacture, stamping machines in washer and nut factories, operating corrugating rolls used in roofing factories; operating a steam boiler, steam machinery, or other steam generating apparatus; setting pins in bowling alleys; operating or assisting in operating dough grates or cracker machinery; operating wire or iron straightening machinery; operating or assisting in operating rolling mill machinery; punches or shears, washing, grinding or mixing mill; operating calendar rolls in rubber manufacturing; operating or assisting in operating laundry machinery; preparing or assisting in preparing any composition in which dangerous or poisonous acids are used; operating or assisting in operating any passenger or freight elevator; manufacturing of goods for immoral purposes; nor in any other employment or occupation dangerous to the life, limb, health or morals of such child.

No female under sixteen (16) years of age shall be employed where such employment requires such female to stand constantly during such employment.

No child under the age of eighteen (18) years shall be employed as a rope or wire walker, contortionist, or at flying rings, hori-

zontal bars, trapeze or other aerial acts, pyramiding, weight lifting, balancing, or casting acts, or in any practices or exhibitions dangerous or injurious to the life, limb, health or morals of such child.

No child under the age of ten years, whether or not a resident of this state, may be employed or exhibited in any theatrical exhibition except in the cases hereinafter referred to.

No child over the age of ten years and under the age of 16 years, whether or not a resident of this state, shall be employed or exhibited in any theatrical entertainment except with the permission of the Industrial Commission; provided that under a permit hereinafter provided for one or more children under the age of 16 years may participate in a family group with either or both of their parents in instrumental musical performance not prohibited as being dangerous or injurious to the health, life, limb or morals of such child or children and not detrimental to their education; and provided, that under such a permit a child or children under the age of 16 years may participate in legitimate dramatic performances by adults where some part or parts can only be portrayed by a child or children and where no signing, dancing or acrobatic performance nor any practice or exhibition dangerous or injurious to the life, limbs, health or morals is performed by such child or children.

In the event it is desired to employ or exhibit in any theatrical entertainment a child within the age limits permitted by law, during that portion of the year when such employment or exhibition is permitted, written application shall be made to the Industrial Commission, specifying the name of the child, its age, and the names and residence of its parent or guardian, the nature, and kind of such performances; the dates, duration and number of performances desired, together with the place and character of the exhibition.

Application for any permit under this act shall be made at least 72 hours before the first performance at which it is desired to exhibit such child.

The Industrial Commission shall, through its Division of Women and Children, investigate each application and shall have power to grant a permit for such employment or exhibition not prohibited by law and for any period during which such employment or exhibition is not prohibited by law after it shall first find that the health, education or school work, morals and welfare will not be detrimentally affected by such employment or exhibition or by the environment in which the same is rehearsed or given. Such permit shall specify the name and residence of the child and the nature and date of performances and the number and duration thereof permitted.

The Industrial Commission shall revoke any permit whenever, in its opinion the exhibition of any child in any performance is detrimental to its health, welfare or morals or is interfering with its education.

Nothing contained in this section or in Section 4094, General Statutes 1923, shall prohibit the appearance of any child in an entertainment given by one or more religious or educational organizations or by a neighborhood association of parents of the children who may perform before it or in any recital connected with the teaching of the art or practice of music; but this proviso shall not be construed as authorizing the appearance of any child in any such entertainment at which an admission fee is charged unless the entire program is furnished by and for the benefit of such religious or educational organization or neighborhood association at such recital unless the entire program is furnished by the pupils of the teachers sponsoring the recital.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor. (As amended Apr. 18, 1929, c. 234, §2.)

Decedent having met death in an occupation prohibited by law at his age, the case is not within the jurisdiction of the Industrial Commission. Weber v. B., 234NW682. See Dun. Dig. 10394(47).

As to the power company, the jury could find that the defense of contributory negligence of the deceased was not established, and such defense was not available to the defendant employer, because of its violation of section. Weber v. B., 234NW682. See Dun. Dig. 6000, 6016.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plaintiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employees in the packing corporation worked, and the latter in employing a boy under 16 in an occupation dangerous to life and limb. Weber v. B., 234NW682. See Dun. Dig. 2996, 5859.

Op. Atty. Gen., Apr. 6, 1931; notes under §§ 4100, 4106.

"Theatrical entertainment" and "theatrical exhibition" defined. Op. Atty. Gen., Apr. 6, 1931.

The use of children under the age of 16 as entertainment features at a night club would be a violation of the Child Labor Law, unless the children were engaged in a theatrical entertainment under a permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

This section does not prohibit children being taught to operate power sewing machines and who pay a tuition. Op. Atty. Gen., Apr. 10, 1931.

§4106. Prohibited employments—Exceptions.

Op. Atty. Gen., Apr. 6, 1931; notes under §§ 4100, 4103.

The engagement of a boy under 14 to broadcast for pay on a radio station during school hours is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

Engagement of a boy under the age of 16 as a paid piano player and musical entertainer in a ballroom after 7 P. M. is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

§§4116 to 4126.

These sections have been declared unconstitutional by the attorney general in opinions, abstracts of which are set forth below:

In submitting to the governor for his approval the bill attempting to limit the hours of employment of women, certain amendments in the bill as passed by the senate and house were inadvertently omitted, with the result that the bill as approved by the governor, filed with the secretary of state, and published as Laws 1923, c. 422 (Mason's Minn. St., 1927, secs. 4116-4126) was never constitutionally enacted. Op. Atty. Gen., June 25, 1926.

Laws 1923, c. 422 [Mason's Minn. St. 1927, secs. 4116-4126], never having been constitutionally enacted, the hours of employment for

women in cities of the first and second class are governed by Laws 1913, c. 581 [set forth post as §§4126-½ to 4126-½b], and as to all other cities Laws 1909, c. 499 [set forth post as §§4126-½c to 4126-½h], is applicable. Op. Atty. Gen., May 8, 1931.

§4126-½. Females in certain employments —Hours of labor—No female shall be employed in any mercantile establishment, restaurant, lunch room or eating house or kitchen operated in connection therewith more than ten hours in any one day or fifty-eight hours in any one week or in any mechanical or manufacturing establishment more than nine hours in any one day or fifty-four hours in any one week, or in any telephone or telegraph establishment more than nine hours in any one day or fifty-four hours in any one week in cities of the first and second class.

Provided that a different apportionment of hours may be made for the sole purpose of giving a shorter day's work for one day of the week, and further provided that the provisions of this act shall not apply to employment required in the canning or otherwise preserving of perishable fruits, grains or vegetables where the period of operating an establishment requiring such employment does not exceed six weeks in duration. Provided further, that females may be employed in retail mercantile establishments not more than eleven hours on Saturday each week, but no case to exceed a total of more than fifty-eight hours in any one week.

Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work, and the hours when the time allowed for meals begins and ends.

The printed forms of such notices shall be provided by the commissioner of labor.

The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section unless it appears that such employment was to make up time lost on a previous day of the same week in consequence of the stopping of machinery upon which he or she was employed or dependent, but no stopping of machinery for less than thirty consecutive minutes shall justify such overtime employment, nor shall overtime employment be authorized until a written report of the day and hour of its occurrence and duration is sent to the commissioner of labor. (G. S. 1913, §3851; Laws 1913, c. 581, §1.)

See notes under §§4116 to 4126.

The only law regulating the hours of women working in lunch rooms is Laws 1913, c. 581, which applies only to cities of the first and second class. Op. Atty. Gen., May 8, 1931.

The phrase, "in cities of the first and second class," is not limited to women employed in telephone or telegraph establishments. Op. Atty. Gen., May 8, 1931.

Under Laws 1913, chapter 581, minimum wage commission has no authority to regulate the hours of certain workers of the state outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

§4126-½a. Same—Meals—In each such establishment at least sixty minutes shall be allowed for the noon day meal unless the commissioner of labor shall permit a shorter time. Where employes are required or permitted to work more than one hour after six o'clock p. m. they shall be allowed at least twenty minutes to obtain lunch before beginning to work overtime. (G. S. 1913, §3852; Laws 1913, c. 581, §2.)

Sections 3, 4 and 5 of Laws 1913, c. 581, were expressly repealed by Laws 1919, c. 491, §20, set forth in Mason's Minn. St., 1927, as §4190.

§4126-½b. Same—Penalty for violation.—Every employer, superintendent, owner or other agent of any establishment named in section one hereof who violates any of the provisions of this chapter shall be guilty of a misdemeanor. ('13 c. 581, §6, G. S. 1913, §3856.)

§4126-½c. Fifty-eight hours to constitute a week for female labor—Duty of employer. —No female shall be employed in laboring in a mercantile establishment more than fifty-eight hours in a week.

Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work which are required of them on each day of the week, the hours of commencing and stopping such work, and the hour when the time or times allowed for dinner or other meals begin and end.

The printed form of such notice shall be furnished by the commissioner of labor.

The employment of any such person for a longer time in any day than so stated shall be deemed a violation of the provisions of this section. (Laws 1909, c. 499, §1.)

See notes under §§4116 to 4126.

§4126-½d. Ten hours a day in manufacturing or mechanical establishment—Duty of employer—Violation.—No female shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-eight in a week.

Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work, and the hours when the time allowed for meals begins and ends.

The printed forms of such notices shall be provided by the commissioner of labor.

The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section unless it appears that such employment was to make up time lost on previous day of the same week in consequence of the stopping of machinery upon which he or she was employed or dependent for employment; but no stopping of machinery for less than thirty consecutive minutes shall justify such overtime employment, nor shall overtime employment be authorized until a written report of the day and hour its occurrence and its duration is sent to the commissioner of labor. (Laws 1909, c. 499, §2.)

§4126-½e. Sixty minutes to be allowed for noon day meal—20 minutes for lunch after 6 o'clock.—In each factory, workshop, store or mill at least sixty minutes shall be allowed for the noon day meal unless the commissioner of labor shall permit a shorter time.

Such permit must be in writing and conspicuously posted in the main entrance of the factory and may be revoked at any time.

Where employes are required or permitted to work more than one hour after six o'clock in the evening they shall be allowed at least twenty minutes to obtain lunch before beginning to work overtime. (Laws 1909, c. 499, §3.)

§4126-½f. Cubic feet of air space.—No more employes shall be required or permitted to work in a room in a factory than will allow to each of such employes, not less than two hundred and fifty cubic feet of air space; and unless by a written permit of the commissioner of labor, not less than four hundred cubic feet for each employe, so employed. (Laws 1909, c. 499, §4.)

§4126-½g. Ventilation to be provided within twenty days.—The owner, agent or lessee of a factory shall provide in each workroom thereof, proper and sufficient means of ventilation, and shall maintain proper and sufficient ventilation; if excessive heat be created or if steam, gases, vapors, dust or other impurities that may be injurious to health be generated in the course of the manufacturing process carried on therein the room must be ventilated in such manner as to render them harmless, so far as is practicable; in case of failure the commissioner of labor shall order such ventilation to be provided.

Such owner, agent, or lessee shall provide such ventilation within twenty days after the service upon him of such order, and in case of failure, shall forfeit to the people of the state, ten dollars for each day after the expiration of such twenty days, to be recovered by the commissioner of labor. (Laws 1909, c. 499, §5.)

§4126-½h. Women and children in manufacturing or mechanical establishments.—Every factory and workshop in this state where women and children are employed and where dusty work is carried on shall be limewashed or painted at least once in every twelve months.

Every floor of any room in said factory shall be thoroughly cleaned with soap and water at least once in six months and every dressing room and water closet in said factory shall be thoroughly cleaned with soap and water once in every week.

Any employer, superintendent, owner or other agent of any mercantile, manufacturing or mechanical establishment who violates any of the provisions of this chapter shall be guilty of a misdemeanor. (Laws 1909, c. 499, §6, as amended by Laws 1911, c. 184, §1.)

WAGES

Evidence held to sustain finding that failure to return to work for railroad was not a resignation nor abandonment of employment, nor a surrender of seniority rights. George v. C., 235NW673. See Dun. Dig., 5808, 5827.

Discharge of railroad fireman for failure to respond to call for emergency run held unjustified. George v. C., 235NW673. See Dun. Dig. 5822, 5832.

Railroad fireman's acceptance of reinstatement held not waiver of right to back pay, of which he was wrongfully deprived. George v. C., 235NW673. See Dun. Dig. 5832.

DANGEROUS MACHINERY

§4141. Dangerous machinery, how guarded—Etc.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plaintiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employees in the packing corporation worked, and the latter in employing a boy under 16 in an occupation dangerous to life and limb. Weber v. B., 234NW682. See Dun. Dig., 2996, 5859.

§4147. Certain places, etc., to be lighted.

"Stairway" means flight of stairs, a series of steps ascending or descending to a different level, while a hatchway signifies an opening in a floor, sidewalk or deck. 171M408, 214NW269.

§4152. Protection of hoistways, elevators, etc.

The word "Hatchway" has reference to openings in a floor, sidewalk, or deck, and not to the head of a stairway. 171M408, 214NW269.

Section does not protect an invitee who was not an employee. 171M440, 214NW659.

§4153. Scaffolds, hoists, etc.—Etc.

An ordinary stepladder is a simple appliance and comes within the simple tool doctrine, relieving the employer, who furnishes it to be used by his employee, from the duty of inspection. Mozey v. E., 234NW687. See Dun. Dig. 5888.

§4172. Duty of employer.

Employee suing at common law held to have assumed the risk of working in ice-cold water in defendant's mine. Jurovich v. I., 233NW465. See Dun. Dig. 5978.

§4174. Ventilation.

Risk of injury from violation of this section is not assumed. 180M21, 230NW125.

§4177. Toilet facilities.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW 136.

§4181. To be kept in perfect condition.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW 136.

MINIMUM WAGES

§4218. Wages, how determined—Etc.

Minimum wage commission had no authority to regulate the hours of workers outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

EMPLOYMENT AGENCIES

§4254-3. Applicant to file written application.—Every applicant for a license shall file with the commission a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be

carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and shall be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. Said application shall also state whether or not said applicant is at the time of making application, or has at any previous time, been engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this state or any other, and if so, when and where. Said application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commission a schedule of the fees or charges to be collected by such employment agent for any services rendered together with all rules or regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commission. It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commission.

It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, the commission or a majority of the members thereof finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use, or whenever, upon investigation by the commission, it is found and determined, that the number of licensed employment agents or that the employment agency operated by the United States, the state or by the municipality or by two or more thereof jointly in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employees. Any such license granted by the commission may also be revoked by it upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions or provisions of Sections 1 to 18 [Mason's Minn. St., 1927, §§4254-1 to 4254-18], inclusive, of this act, or with any lawful orders of the commission, shall be deemed due cause to revoke such license. Provided, however that no employment agency duly licensed to do business at the time of the passage of this act shall be denied a renewal of his, her or its license or have his, her, or its license revoked on the ground that public necessity does not require such an agency. (As amended Apr. 23, 1929, c. 293.)

The industrial commission must issue a license unless reasons for rejecting it, pointed out by the statute, are found to exist. The commission has no power to limit the number of agencies. 173M47, 216NW323.

INJUNCTIONS AND RESTRAINING ORDERS

§4256. When restraining order or injunction not to be issued.—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, except after notice and a hearing in court and shown to be necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney; provided, that a temporary restraining order may be issued without notice and hearing upon a proper showing that violence is actually being caused or is imminently probable on the part of the person or persons sought to be restrained; and provided that in such restraining order all parties to the action shall be similarly restrained. (As amended Apr. 19, 1929, c. 260.)

CHAPTER 23A
Workmen's Compensation Act

PART 1

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

§4261. Injury or death of employee.

See also notes under §4326.

174M359, 219NW292; 174M362, 219NW293; 174M491, 219NW869.

Liberal construction of law. 174M227, 218NW882; 177M503, 225NW428.

Accident.

See notes under §4326.

Arising out of and in the course of employment.

See notes under §4326.

§4267. Legal services and disbursements, etc.