

MINNESOTA STATUTES 1979 SUPPLEMENT

179.74 LABOR RELATIONS

not receive the wage and economic fringe benefit increases provided pursuant to an agreement executed and approved under this subdivision. Disapproval by the legislative commission on employee relations pursuant to section 3.855 or failure of the legislature to approve a negotiated agreement or arbitration award with respect to wages and economic fringe benefits by the time of adjournment of the regular legislative session in an odd numbered year shall be a defense to a violation of section 179.64.

[1979 c 332 art 1 s 65,66]

CHAPTER 180. MINE INSPECTORS

Sec.
180.03 Duties.

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[For text of subd 1, see M.S.1978]

Subd. 2. Every person, firm or corporation that is or has been engaged in the business of mining or removing iron ore, taconite, semitaconite or other minerals except sand, crushed rock and gravel by the open pit method in any county which has appointed an inspector of mines pursuant to section 180.01 shall erect two inch by four inch mesh fencing along the outside perimeter of the excavation, open pit, or shaft of any mine in which mining operations have ceased for a period of six consecutive months or longer. The top and bottom wire shall not be less than 9 gauge and the filler wire shall not be less than 11 gauge. The fencing shall be not less than five feet in height with two strands of barbed wire six inches apart affixed to the top of the fence. The fence posts shall be no more than ten feet apart. In the case of open pit mines in which mining operations cease after November 1, 1979, and before March 1, 1980, the fencing shall be erected as soon as possible after March 1, 1980. Where mining operations cease on or after March 1, 1980, the fencing shall be erected forthwith. In the case of open pit mines in which mining operations had ceased for a period of six consecutive months or longer before November 1, 1979, and not resumed, the fencing shall be erected within two years after November 1, 1979. Any fencing required by an inspector of mines pursuant to subdivision 3 or other applicable law shall meet the standards of this section as a minimum. This subdivision does not apply to any excavation, open pit, or shaft, or any portion thereof, exempted from its application by the commissioner of natural resources pursuant to laws relating to mineland reclamation or exempted from its application by the county mine inspector pursuant to subdivision 4.

[For text of subds 3 and 4, see M.S.1978]

[1979 c 333 s 91]

CHAPTER 181. EMPLOYMENT; WAGES, CONDITIONS, HOURS, RESTRICTIONS

Sec. 181.81	Dismissal for age; prohibition; exceptions; remedies.	Sec. 181.811 181.812	Mandatory retirement age. Rules.
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181.81 Dismissal for age; prohibition; exceptions; remedies.

Subdivision 1. (a) It is unlawful for any employer, public or private, excluding the United States government and any of its instrumentalities, to refuse to hire or employ, or to discharge, dismiss, reduce in grade or position, or demote any individual on the grounds that the individual has reached an age of less than 70, except in cases where federal statutes or rules or other state statutes, not including special laws compel or specifically authorize such action. Nothing in this section shall prohibit compulsory retirement of employees who have attained 70 years of age or more; provided further that nothing in this section shall prohibit compulsory retirement of an employee who has attained at least 65 years of age and who for the two year period immediately before retirement is employed in an executive or a high policy making position if that employee is

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EMPLOYMENT; WAGES, CONDITIONS, HOURS, RESTRICTIONS 181.811

entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan of an employer, or any combination of these benefits which totals in the aggregate at least \$27,000. If the retirement benefit is in a form other than a straight life annuity, the equivalent annualized payment value of the benefit shall be actuarially determined according to rules promulgated by the commissioner of labor and industry. Pilots and flight crew members shall not be subject to the provisions of this section or section 363.02, subdivision 6, but shall be retired from this employment pursuant to standards contained in regulations promulgated by the federal aviation administration for airline pilots and flight officers and are subject to the bona fide occupational requirements for these employees as promulgated by the federal aviation administration.

(b) Prior to June 1, 1982 every employer shall notify an employee in writing at least 90 days but no more than 120 days prior to the employee's 65th birthday of the option to continue employment beyond that date. The notice shall state in a conspicuous manner that the employee shall respond to the notice within 30 days of the employee's desire to continue employment beyond the employee's 65th birthday. Every employer shall post in a conspicuous place a notice written or approved by the commissioner of labor and industry stating that the mandatory retirement age is age 70. Employment shall continue for as long as the employee desires or until the employer demonstrates that the employee no longer can meet the bona fide requirements, consistently applied, for the job or position or until the employee reaches the compulsory retirement age established by the employer. When an employer intends to terminate an employee who is 65 years of age or older earlier than age 70 on the ground that he no longer can meet the bona fide requirements for the job or position he shall give the employee 30 days notice of his intention.

(c) If there exists a date on which the accrual of pension benefits or credits, or the contributions therefor by the employee or the employer, or the employee's employment related health and welfare benefits or insurance coverages are diminished or eliminated by virtue of the employee attaining a certain age, the employer shall notify the employee of the changes at least 90 but not more than 120 days prior to the effective date of the change. This section, in and of itself, shall not be construed to require any change in the employer contribution levels of any pension or retirement plan, or to require any employer to increase an employer's or employee's payments for the provision of insurance benefits contained in any employee benefit or insurance plan.

Subd. 2. (a) The commissioner of labor and industry shall advise any inquiring parties, employee or employer, of their rights and duties under this section and to the extent practicable their rights and duties under any applicable provisions of law governing retirement or other benefits. Further, the commissioner may attempt to conciliate any disputes between employees and employers over the application of or alleged violations of this section.

(b) Any party aggrieved by a violation of this section may bring suit for redress in the district court wherein the violation occurred or in the district court wherein the employer is located. If a violation is found the court in granting relief may enjoin further violations and may include in its award reinstatement or compensation for any period of unemployment resulting from the violation together with actual and reasonable attorneys fees, and other costs incurred by the plaintiff.

(c) When an action is commenced alleging a violation of this section the plaintiff may in the same action allege a violation of chapter 363, and seek relief under that chapter if all the procedural requirements of chapter 363 have been met. Alternatively, when a charge is filed or an action commenced alleging a violation of chapter 363, the plaintiff may in the same action allege a violation of this section and seek relief under this section. In either case, when determining whether or not a violation of chapter 363, has occurred the court shall incorporate the substantive requirements of this section into any duties and rights specified by chapter 363.

[1979 c 40 s 3]

181.811 Mandatory retirement age.

Laws 1978, Chapter 649 is effective April 24, 1979, subject to the following exceptions:

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(1) In the case of employees covered by a collective bargaining agreement which was entered into between a labor organization and an employer and which was in effect on September 1, 1977, it shall take effect upon the termination of the agreement or on January 1, 1980, whichever comes first.

(2) Nothing contained in Laws 1978, Chapter 649 or Laws 1979, Chapter 40 shall be construed as requiring the rehiring, reinstatement or payment of additional benefits to an employee who terminates service prior to April 24, 1979, with an employer who employs 20 or more employees, or the rehiring, reinstatement or payment of additional benefits to an employee who terminates service prior to June 1, 1980, with an employer who employs less than 20 employees, pursuant to a mandatory retirement law or policy which mandates retirement prior to attaining 70 years of age, or any other employee who terminates service prior to the termination of a collectively bargained contract containing a mandatory retirement provision.

(3) Laws 1978, Chapter 649, Section 3, is effective January 1, 1979. Any person who was previously a member of and has received a refund of accumulated employee or member contributions from one or more of the covered retirement funds enumerated in section 356.32, subdivision 2 and who terminated service at age 65 or older for any reason whether or not the person was required to terminate service pursuant to a mandatory retirement statute or a uniformly applied mandatory retirement policy established by the employer between January 1, 1979 and April 24, 1979 shall be entitled to repay the refund of accumulated employee or member contributions to the respective retirement fund with compound interest at the rate of six percent from the date the refund was received to the date the refund is repaid. Upon repayment of a refund, the person shall be entitled if otherwise qualified to a proportionate annuity, with accrual to commence upon the first day of the month following the filing of a valid application for the annuity.

(4) Employers who employ fewer than 20 employees shall not be subject to the provisions of Laws 1978, Chapter 649, until June 1, 1980.

(5) In the case of an employee serving under a contract of unlimited tenure or a similar arrangement providing for unlimited tenure at a private institution which is an institution of higher education, as defined in section 1201(a) of the federal higher education act of 1965, Laws 1978, Chapter 649 is effective July 1, 1982.

[1979 c 40 s 4]

181.812 Rules.

The commissioner may promulgate rules which are deemed necessary to carry out the provisions of section 181.81.

[1979 c 40 s 5]

CHAPTER 181A. CHILD LABOR

Sec.
181A.08 Powers and duties of the department.

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[For text of subds 1 and 2, see M.S.1978]

Subd. 3. The commissioner or his authorized representative may apply to any court of competent jurisdiction for an order restraining the violation of an order issued by the commissioner pursuant to subdivision 2, or for an order enjoining and restraining violations of this chapter or regulations adopted pursuant to section 181A.09.

[1979 c 202 s 1]

CHAPTER 184. EMPLOYMENT AGENCIES

Sec.
184.22 Licenses required.