CHAPTER 181

EMPLOYMENT; WAGES, CONDITIONS, HOURS, RESTRICTIONS

181.01 WAGES OF MINORS; TO WHOM PAID.

Any parent or guardian claiming the wages of a minor in service shall so notify the employer and, if failing to do so, payment to the minor of wages so earned shall be valid.

History: *(4133) RL s 1812; 1986 c 444*

181.02 SALARY OR WAGES NOT TO BE PAID BY NONNEGOTIABLE INSTRUMENTS.

It shall be unlawful for any person, firm, or corporation, other than public service corporations, to issue to any employee in lieu of or in payment of any salary or wages earned by such employee a nonnegotiable time check or order. Any person, firm, or corporation so issuing a nonnegotiable instrument in lieu of or in payment of such salary or wages earned shall be guilty of a misdemeanor.

History: *(4134) 1917 c 348 s 1*

181.03 CERTAIN ACTS RELATING TO PAYMENT OF WAGES UNLAWFUL.

Any person, firm, corporation, or association who or which, directly or indirectly and with intent to defraud, causes any employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered or directly or indirectly demands or receives from any employee any rebate or refund from the wages to which the employee is entitled under contract of employment with such employer, or in any manner makes or attempts to make it appear that the wages paid to any employee were greater than the amount actually paid to the employee shall be guilty of a misdemeanor.

History: *(4134-1) 1933 c 249; 1986 c 444*

181.031 EMPLOYERS NOT TO ACCEPT CONSIDERATION FOR SECURING EMPLOYMENT.

Any employer, or any manager, superintendent, lead supervisor, or other representative of any employer, who, directly or indirectly, demands or accepts from any employee any part of such employee's wages or other consideration, or any gratuity, in consideration of giving to or securing, or assisting in securing, for any employee any employment with such employer shall be guilty of a misdemeanor.

History: *(10536-1) 1933 c 47; 1986 c 444*

181.032 REQUIRED STATEMENT OF EARNINGS BY EMPLOYER.

At the end of each pay period, the employer shall give each employee an earnings statement in writing covering that pay period. The earnings statement may be in any form determined by the employer but must include:

(a) the name of the employee;

(b) the hourly rate of pay (if applicable);

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

(d) the total amount of gross pay earned by the employee during that period;

(e) a list of deductions made from the employee's pay;

(f) the net amount of pay after all deductions are made; and

(g) the date on which the pay period ends.

An employer, who for the purpose of depriving an employee of wages to which the employee is entitled and in order to mislead the employee, furnishes to the employee a statement that the employer knows to be false is guilty of a misdemeanor.

History: *1Sp1985 c 13 s 291*

181.04 ASSIGNMENT, SALE, OR TRANSFER OF WAGES; WHEN NOT EFFECTIVE.

No assignment, sale, or transfer, however made or attempted to be made, of any wages or salary to be earned shall give any right of action either at law or in equity to the assignee or transferee of such wages or salary, nor shall any action lie for the recovery of such wages or salary, or any part thereof, by any other person than the person to whom such wages or salary are to become due unless a written notice, together with a true and complete copy of the instrument assigning or transferring such wages or salary, shall have been given within three days after the making of such instrument to the person, firm, or corporation from whom such wages or salary are accruing or may accrue.

History: *(4135) 1905 c 309 s 1; 1917 c 321 s 1*

181.041 GARNISHMENT; ASSIGNMENT, SALE OR TRANSFER OF WAGES; WHEN NOT EFFECTIVE.

No assignment, sale or transfer, however made or attempted, of any earned or unearned wages or salary is in any manner valid or effectual for the transfer of any salary or wages and should be disregarded if made following service of a garnishment exemption notice and within ten days prior to the receipt of the first garnishment or execution on a debt.

History: *1976 c 335 s 2*

181.05 CONSENT OF EMPLOYER TO ASSIGNMENT REQUIRED.

No assignment, sale, or transfer, however made or attempted, of any unearned wages or salary shall be in any manner valid or effectual for the transfer of any salary or wages to be earned or accruing after the making of such assignment, sale, or transfer unless the person, firm, or corporation from whom such wages or salary are to accrue shall consent thereto in writing. Any employer or agent of such employer accepting or charging any fee or commission for collecting the amount due on any such assignment, sale, or transfer shall be deemed guilty of a misdemeanor.

History: *(4136) 1905 c 309 s 2*

181.06 ASSIGNMENT OF WAGES; PAYROLL DEDUCTIONS.

Subdivision 1. **Assignment of wages.** Every assignment, sale, or transfer, however made or attempted, of wages or salary to be earned or to become due, in whole or in part, more than 60 days from and after the date of making such transfer, sale or assignment shall be absolutely void; provided however, that the foregoing restriction against transfer, sale or assignment shall not apply to any assignment, sale or transfer of that portion of wages or salary to be earned or to become due in excess of the first $1,500 per month where such assignment is for less than five years.

Subd. 2. **Payroll deductions.** A written contract may be entered into between an employer and an employee wherein the employee authorizes the employer to make payroll deductions for the purpose of paying union dues, premiums of any life insurance, hospitalization and surgical insurance, group accident and health insurance, group term life insurance, group annuities or contributions to credit unions or a community chest fund, a local arts council, a local science council or a local arts and science council, or Minnesota benefit association, a federally or state registered political action commit-

tee, or participation in any employee stock purchase plan or savings plan for periods longer than 60 days.

History: *(4137) 1905 c 309 s 3; 1937 c 95 s 1; 1951 c 213 s 1; 1965 c 778 s 1; 1967 c 517 s 1; 1977 c 231 s 1; 1984 c 508 s 1*

181.063 ASSIGNMENT OF WAGES, PUBLIC EMPLOYEES.

Any officer or employee of a county, town, city, or school district, or any department thereof, has the same right to sell, assign, or transfer salary or wages as is now possessed by any officer of or person employed by any corporation, firm, or person.

History: *1945 c 424 s 26; 1973 c 123 art 5 s 7; 1986 c 444*

181.07 ASSIGNMENT OF UNEARNED WAGES AS SECURITY.

No assignment of or order for wages to be earned in the future to secure a loan of less than $200 shall be valid against an employer of the person making the assignment or order until the assignment or order is accepted in writing by the employer and the assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making the assignment or order resides, if a resident of this state, or in which the person is employed if the person is a nonresident. No assignment of or order for wages to be earned in the future shall be valid when made by a married person unless the written consent of the person's spouse to the making of the assignment or order is attached thereto.

History: *(4138) 1911 c 308 s 1; 1981 c 31 s 3*

181.08 PUBLIC SERVICE CORPORATIONS; PAYMENT OF WAGES, REQUIREMENTS.

All public service corporations doing business within this state are required to pay their employees at least semimonthly the wages earned by them to within 15 days of the date of such payment, unless prevented by inevitable casualty. Such wages less any voluntarily authorized payroll deduction set out in section 181.06 shall be paid in cash, or by checks convertible into cash at full face value thereof, without any service, exchange, discount, float or other charges, at a bank designated by such public service corporation located in any city in which the employee to whom the check is issued is employed or into which such employee is required to go in the performance of work for the company issuing the same. It shall be the duty of the corporation to make necessary arrangements with a bank for the cashing of these checks without such charges, or to reimburse any employee who has paid such charges upon request. When an employee shall be discharged wages shall be paid at the time of discharge or whenever the employee shall demand the same thereafter; allowing a reasonable time within which to compute wages due and to make authorized and other deductions required by law.

History: *(4139) 1915 c 29 s 1; 1915 c 37 s 1; 1945 c 478 s 1; 1951 c 213 s 2; 1953 c 393 s 1; 1973 c 123 art 5 s 7; 1986 c 444*

181.09 RECOVERY OF WAGES, COSTS.

When any public service corporation neglects or refuses to pay its employees, as prescribed by section 181.08, the wages may be recovered by action without further demand. Costs of $10 shall be allowed to the plaintiff and included in the judgment, in addition to disbursements allowed by law.

History: *(4140) 1915 c 29 s 2; 1915 c 37 s 2; 1953 c 359 s 1; 1983 c 359 s 19; 1986 c 444*

181.10 WAGES PAID EVERY 15 DAYS.

Every person, firm, corporation, or association employing any person to labor or perform service on any project of a transitory nature, such as the construction, paving, repair, or maintenance of roads or highways, sewers or ditches, clearing land, or the pro-

duction of forest products or any other work which requires the employee to change the employee's place of abode, shall pay the wages or earnings of such person at intervals of not more than 15 days, and payments thereof shall be made at the place of employment or in close proximity thereto.

History: *(4140-1) 1933 c 223 s 1; 1986 c 444*

181.101 WAGES; HOW OFTEN PAID.

Every employer shall pay all wages due an employee at least once every 30 days on a regular pay day designated in advance by the employer, except that an employer may withhold an employee's check until the signed statement for that pay period stating the amount of gratuities is received, as provided in section 177.28, subdivision 4. If wages due are not paid, the commissioner of labor and industry or the commissioner's representative may demand payment on behalf of an employee. If payment is not made within ten days of demand, the commissioner may charge and collect the wages due and a penalty in the amount of the employee's average daily earnings at the rate agreed upon in the contract of employment, not exceeding 15 days in all, for each day beyond the ten-day limit following the demand. Money collected by the commissioner must be paid to the employee concerned. This subdivision does not prevent an employee from prosecuting a claim for wages.

History: *1Sp1985 c 13 s 292*

181.11 DISCHARGED EMPLOYEE MUST BE PAID WITHIN 24 HOURS.

When any such transitory employment as is described in section 181.10 which requires an employee to change the employee's place of abode while performing the service required by the employment is terminated, either by the completion of the work or by the discharge or quitting of the employee, the wages or earnings of such employee in such employment shall be paid within 24 hours and, if not then paid, the employer shall pay the employee's reasonable expenses of remaining in the camp or elsewhere away from home while awaiting the arrival of payment of wages or earnings and, if such wages or earnings are not paid within three days after the termination of such employment for any cause, the employer shall, in addition, pay to the employee the average amount of the employee's daily earnings in such employment from the time of the termination of the employment until payment has been made in full, but not for a longer period of time than 15 days.

History: *(4140-2) 1933 c 223 s 2; 1986 c 444*

181.12 RAILROAD PAY CHECKS TO SHOW AMOUNT OF DEDUCTION.

Every railroad corporation doing business within this state shall state clearly on a statement accompanying each check, issued to an employee for services rendered to such corporation in this state, the amount of any deduction made from the regular wage of such employee, the reason therefor, and the date or period covered by such deduction. Deductions authorized by the employee may be designated as miscellaneous on the statement accompanying such check.

History: *(4140-3) 1935 c 141 s 1; 1939 c 169; 1945 c 123 s 1; 1980 c 509 s 82*

181.13 PENALTY FOR FAILURE TO PAY WAGES PROMPTLY.

When any person, firm, company, association, or corporation employing labor within this state discharges a servant or employee, the wages or commissions actually earned and unpaid at the time of the discharge shall become immediately due and payable upon demand of the employee. If the employee's earned wages and commissions are not paid within 24 hours after such demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the discharged employee may charge and collect the amount of the employee's average daily earnings at the rate agreed upon in the contract of employment, for such period, not exceeding 15 days, after the expiration of the 24 hours, as the employer is in default, until full payment

or other settlement, satisfactory to the discharged employee, is made. In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment shall not commence until the date of the first regular or special meeting of the governing board following discharge of the employee. The wages and commissions must be paid at the usual place of payment unless the employee requests that the wages and commissions be sent through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

History: *(4127) 1919 c 175 s 1; 1933 c 173 s 1; 1984 c 446 s 1; 1Sp1985 c 16 art 1 s 2; 1986 c 444*

181.14 NOTICE TO BE GIVEN; SETTLEMENT OF DISPUTES.

When any such employee, not having a contract for a definite period of service, quits or resigns employment, the wages or commissions earned and unpaid at the time the employee quits or resigns shall become due and payable within five days thereafter. Any employer failing or refusing to pay such wages or commissions, after they become due, upon the demand of the employee, shall be liable to the employee from the date of the demand for an additional sum equal to the amount of the employee's average daily earnings provided in the contract of employment, for every day, not exceeding 15 days in all, until such payment or other settlement satisfactory to the employee is made. If any employee having such a contract gives not less than five days' written notice to the employer of intention to quit, the wages or commissions of the employee giving notice may be demanded and shall become due 24 hours after the employee quits or resigns, and the penalty herein provided shall apply from the date of demand. If the employer disputes the amount of wages or commissions claimed by the employee under the provisions of this section or section 181.13, and the employer makes a legal tender of the amount which the employer in good faith claims to be due, the employer shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having jurisdiction, the employee recovers a greater sum than the amount so tendered with interest thereon; and if, in the suit, the employee fails to recover a greater sum than that so tendered, with interest, the employee shall pay the cost of the suit, otherwise the cost shall be paid by the employer. In cases where the discharged or quitting employee was, during employment, entrusted with the collection, disbursement, or handling of money or property, the employer shall have ten secular days after the termination of the employment to audit and adjust the accounts of the employee before the employee's wages or commissions shall become due and payable, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of the period allowed for audit and adjustment. If, upon such audit and adjustment of the accounts of the employee, it is found that any money or property entrusted to the employee by the employer has not been properly accounted for or paid over to the employer, as provided by the terms of the contract of employment, the employee shall not be entitled to the benefit of sections 181.13 to 181.17, but the claim for unpaid wages or commissions of such employee, if any, shall be disposed of as provided by existing law. Wages and commissions paid under this section shall be paid at the usual place of payment unless the employee requests that the wages and commissions be sent to the employee through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

History: *(4128) 1919 c 175 s 2; 1933 c 173 s 2; 1984 c 446 s 2; 1986 c 444*

181.145 PROMPT PAYMENT OF COMMISSIONS TO COMMISSION SALESPEOPLE.

Subdivision 1. **Definitions.** For the purposes of this section, "commission salesper-

son" means a person who is paid on the basis of commissions for sales and who is not covered by sections 181.13 and 181.14 because the person is an independent contractor. For the purposes of this section, the phrase "commissions earned through the last day of employment" means commissions due for services or merchandise which have actually been delivered to and accepted by the customer by the final day of the salesperson's employment.

Subd. 2. **Prompt payment required.** (a) When any person, firm, company, association, or corporation employing a commission salesperson in this state terminates the salesperson, or when the salesperson resigns that position, the employer shall promptly pay the salesperson, at the usual place of payment, commissions earned through the last day of employment or be liable to the salesperson for the penalty provided under subdivision 3 in addition to any earned commissions unless the employee requests that the commissions be sent to the employee through the mails. If, in accordance with a request by the employee, the employee's commissions are sent to the employee through the mail, the commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

(b) If the employer terminates the salesperson or if the salesperson resigns giving at least five days written notice, the employer shall pay the salesperson's commissions earned through the last day of employment on demand no later than three working days after the salesperson's last day of work.

(c) If the salesperson resigns without giving at least five days written notice, the employer shall pay the salesperson's commissions earned through the last day of employment on demand no later than six working days after the salesperson's last day of work.

(d) Notwithstanding the provisions of paragraphs (b) and (c), if the terminated or resigning salesperson was, during employment, entrusted with the collection, disbursement, or handling of money or property, the employer has ten working days after the termination of employment to audit and adjust the accounts of the salesperson before the salesperson can demand commissions earned through the last day of employment. In such cases, the penalty provided in subdivision 3 shall apply only from the date of demand made after the expiration of the ten working day audit period.

Subd. 3. **Penalty for nonprompt payment.** If the employer fails to pay the salesperson commissions earned through the last day of employment on demand within the applicable period as provided under subdivision 2, the employer shall be liable to the salesperson, in addition to earned commissions, for a penalty for each day, not exceeding 15 days, which the employer is late in making full payment or satisfactory settlement to the salesperson for the commissions earned through the last day of employment. The daily penalty shall be in an amount equal to 1/15 of the salesperson's commissions earned through the last day of employment which are still unpaid at the time that the penalty will be assessed.

Subd. 4. **Amount of commission disputed.** (a) When there is a dispute concerning the amount of the salesperson's commissions earned through the last day of employment or whether the employer has properly audited and adjusted the salesperson's account, the penalty provided in subdivision 3 shall not apply if the employer pays the amount it in good faith believes is owed the salesperson for commissions earned through the last day of employment within the applicable period as provided under subdivision 2; except that, if the dispute is later adjudicated and it is determined that the salesperson's commissions earned through the last day of employment were greater than the amount paid by the employer, the penalty provided in subdivision 3 shall apply.

(b) If a dispute under this subdivision is later adjudicated and it is determined that the salesperson was not promptly paid commissions earned through the last day of employment as provided under subdivision 2, the employer shall pay reasonable attorney's fees incurred by the salesperson.

Subd. 5. **Commissions earned after last day of employment.** Nothing in this section shall be construed to impair a commission salesperson from collecting commissions on

merchandise ordered prior to the last day of employment but delivered and accepted after termination of employment. However, the penalties prescribed in subdivision 3 apply only with respect to the payment of commissions earned through the last day of employment.

History: *1984 c 446 s 3; 1986 c 444*

181.15 WHEN EMPLOYEE NOT ENTITLED TO BENEFITS.

No such servant or employee who hides or stays away to avoid receiving payment, or refuses to receive the same when fully tendered, shall be entitled to any benefit under sections 181.13 to 181.17 for such time as so avoiding payment; provided, when any number of employees enter upon a strike the wages due such striking employees at the time of entering upon such strike shall not become due until the next regular pay day after the commencement of such strike.

History: *(4129) 1919 c 175 s 3; 1986 c 444*

181.16 CONSTRUCTION OF SECTIONS 181.13 TO 181.17.

Sections 181.13 to 181.17 shall not be construed to apply to any employer or an individual, copartnership, or corporation that is bankrupt, or where a receiver or trustee is acting under the direction of the court. Payment or tender by check drawn on a bank situated in the county where a laborer is employed shall be a sufficient payment or tender to comply with the provisions of sections 181.13 to 181.17.

History: *(4130) 1919 c 175 s 4; 1983 c 41 s 1*

181.17 COSTS, PAID BY DEFENDANT.

In any action by an employee pursuant to sections 181.13 to 181.17 for the recovery of unpaid wages after the time when the wages become due, the plaintiff shall be allowed double statutory costs in addition to disbursements allowed by law.

History: *(4131) 1919 c 175 s 5; 1983 c 359 s 20*

181.18 [Repealed, 1974 c 432 s 13]
181.19 [Repealed, 1974 c 432 s 13]
181.20 [Repealed, 1974 c 432 s 13]
181.21 [Repealed, 1974 c 432 s 13]
181.22 [Repealed, 1974 c 432 s 13]
181.23 [Repealed, 1974 c 432 s 13]
181.24 [Repealed, 1974 c 432 s 13]
181.25 [Repealed, 1974 c 432 s 13]
181.26 [Repealed, 1974 c 432 s 13]
181.27 [Repealed, 1974 c 432 s 13]

181.28 LOCOMOTIVE ENGINEERS, HOURS.

Locomotive engineers and fire tenders shall not be required to serve as such for more than 14 consecutive hours. At least nine hours, or as many hours less as are asked for by these engineers or fire tenders, shall be allowed for rest before being again required to go on duty. Nothing herein shall permit any such engineer or fire tender to desert a locomotive when, by reason of accident or of delay caused by the elements, another cannot immediately be procured as a replacement, nor prohibit them, in any case, from serving longer than 14 hours if they so desire. Every superintendent or other officer or employer of a railway company who shall order or require any service in violation of this section shall be guilty of a misdemeanor, and such company shall be liable to any engineer or fire tender for injuries sustained in consequence of such violation.

History: *(4091) RL s 1801; 1986 c 444*

181.29 CERTAIN RAILROAD EMPLOYEES, HOURS.

It shall be unlawful for any railroad company within the state, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any rolling stock, engine, or train, to remain on duty more than 16 consecutive hours, or to require or permit any such employee who has been on duty 16 consecutive hours to perform any further service without having had at least eight hours' rest, or to require or permit any such employee to be on duty at any time to exceed 16 hours in any consecutive 24 hours. This section shall not apply to work performed in the protection of life or property in cases of accident, wreck, or other unavoidable casualty, and it shall not apply to the time necessary for train workers to reach a resting place when an accident, wreck, washout, snow blockade, or other unavoidable cause has delayed their train.

History: *(4092) 1907 c 253 s 1; 1986 c 444*

181.30 DUTY OF DEPARTMENT OF PUBLIC SERVICE.

Any officer of any railroad company in the state violating any of the provisions of section 181.29 shall be guilty of a misdemeanor; and, upon conviction, punished by a fine of not less than $100, and not more than $700, for each offense, or by imprisonment in the county jail not more than 60 days, or both fine and imprisonment, at the discretion of the court. It shall be the duty of the state department of public service, upon complaint properly filed with it alleging a violation of section 181.29, to make a full investigation in relation thereto, and for such purpose it shall have the power to administer oaths, interrogate witnesses, take testimony and require the production of books and papers, and if such report shall show a violation of the provisions of section 181.29, the department of public service shall, through the attorney general, begin the prosecution of all parties against whom evidence of such violation is found; but section 181.29 shall not be construed to prevent any other person from beginning prosecution for the violation of the provisions thereof.

History: *(4093) 1907 c 253 s 2; 1971 c 25 s 67; 1984 c 628 art 3 s 11*

181.31 [Repealed, 1974 c 432 s 13]
181.32 [Repealed, 1974 c 432 s 13]
181.33 [Repealed, 1974 c 432 s 13]
181.34 [Repealed, 1974 c 432 s 13]
181.35 [Repealed, 1974 c 432 s 13]
181.36 [Repealed, 1974 c 432 s 13]
181.37 [Repealed, 1974 c 432 s 13]
181.38 [Repealed, 1974 c 432 s 13]
181.39 [Repealed, 1974 c 432 s 13]
181.40 [Repealed, 1974 c 432 s 13]
181.41 [Repealed, 1974 c 432 s 13]
181.42 [Repealed, 1974 c 432 s 13]
181.43 [Repealed, 1974 c 432 s 13]
181.44 [Repealed, 1974 c 432 s 13]
181.45 [Repealed, 1974 c 432 s 13]
181.46 [Repealed, 1974 c 432 s 13]
181.47 [Repealed, 1974 c 432 s 13]
181.48 [Repealed, 1974 c 432 s 13]
181.49 [Repealed, 1974 c 432 s 13]
181.50 [Repealed, 1974 c 432 s 13]
181.51 [Repealed, 1974 c 432 s 13]

181.52 INTERFERENCE WITH EMPLOYMENT.

No individual, corporation, member of any firm, or any agent, officer, or employee of any of them, shall contrive or conspire to prevent any person from obtaining or holding any employment, or discharge, or procure or attempt to procure the discharge of, any person from employment, by reason of the person having engaged in a strike.

History: *(4201) RL s 1822; 1986 c 444*

181.53 CONDITIONS PRECEDENT TO EMPLOYMENT NOT REQUIRED.

No person, whether acting directly or through an agent, or as the agent or employee of another, shall require as a condition precedent to employment any written statement as to the participation of the applicant in a strike, or as to a personal record, save as to conviction of a public offense, for more than one year immediately preceding the date of application therefor; nor shall any person, acting in any of the aforesaid capacities, use or require blanks or forms of application for employment in contravention of this section.

History: *(4202) RL s 1823; 1986 c 444*

181.54 COMMISSIONER OF HUMAN SERVICES, SAFETY INSPECTION WORK.

The commissioner of human services is hereby authorized and empowered to expend out of any relief funds available therefor such sums of money which in the commissioner's judgment may be necessary for safety inspection work required by law for the protection of employees engaged upon such state and federal projects as may be designated by the commissioner.

History: *(4202-1) 1935 c 233 s 1; 1939 c 431 art 7 s 2; 1953 c 593 s 2; 1984 c 654 art 5 s 58; 1986 c 444*

181.55 WRITTEN STATEMENT TO EMPLOYEES BY EMPLOYERS.

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

(1) The date on which the agreement was entered into;

(2) The date on which the services of the employee are to begin;

(3) The rate of pay per unit of time, or of commission, or by the piece, so that wages due may be readily computed;

(4) The number of hours a day which shall constitute a regular day's work, and whether or not additional hours the employee is required to work shall constitute overtime and be paid for, and, if so, the rate of pay for overtime work; and

(5) A statement of any special responsibility undertaken by the employee, not forbidden by law, which, if not properly performed by the employee, will entitle the employer to make deductions from the wages of the employee, and the terms upon which such deductions may be made.

History: *(4126-11) 1933 c 250 s 1*

181.56 NO STATEMENT GIVEN; BURDEN OF PROOF.

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

History: *(4126-12) 1933 c 250 s 2*

181.57 APPLICATION OF SECTIONS 181.55 AND 181.56.

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

History: *(4126-13) 1933 c 250 s 3*

181.58 SURVIVING SPOUSE PAID WAGES DUE.

For the purposes of this section the word "employer" includes every person, firm, partnership, corporation, the state of Minnesota, all political subdivisions, and all municipal corporations.

If, at the time of the death of any person, an employer is indebted to the person for work, labor, or services performed, and no personal representative of the person's estate has been appointed, such employer shall, upon the request of the surviving spouse, forthwith pay this indebtedness, in such an amount as may be due, not exceeding the sum of $10,000, to the surviving spouse. The employer may in the same manner provide for payment to the surviving spouse of accumulated credits under the vacation or overtime plan or system maintained by the employer. The employer shall require proof of claimant's relationship to decedent by affidavit, and require claimant to acknowledge receipt of such payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable therefor to the decedent's estate or the decedent's personal representative thereafter appointed. Any amounts so received by a spouse shall be considered in diminution of the allowance to the spouse under section 525.15.

History: *1941 c 408 s 1; 1951 c 531 s 1; 1957 c 126 s 1; 1969 c 954 s 1; 1986 c 444; 1987 c 325 s 1*

181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT.

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) That a violation of this section is a misdemeanor; and

(4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

History: *1941 c 238; 1973 c 123 art 5 s 7; 1984 c 609 s 11*

181.60 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 181.60 to 181.62, unless a different meaning is indicated by the context, the terms defined in this section shall have the meanings given them.

Subd. 2. **Employer.** "Employer" means any individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

Subd. 3. **Employee.** "Employee" means any person who may be permitted, required, or directed by any employer, as defined in subdivision 2, in consideration of direct or indirect gain or profit, to engage in any employment.

History: *1951 c 201 s 1*

181.61 MEDICAL EXAMINATION; RECORDS, COSTS.

It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment, except certificates of attending physicians in connection with the administration of an employee's pension and disability benefit plan or citizenship papers or birth certificates.

History: *1951 c 201 s 2*

181.62 VIOLATIONS.

Any employer who violates any of the provisions of sections 181.60 to 181.62 is guilty of a misdemeanor.

History: *1951 c 201 s 3*

181.63 SALE OR USE OF SILICATE, SILICA DUST, OR SILICON FLOUR FOR CERTAIN PURPOSES.

It shall be unlawful and a misdemeanor in the state of Minnesota to sell or use any materials used in a dry state for dusting the surface of molds to form a separation of the component parts of the mold which contain silicate, silica dust, or silica flour. It shall be the duty of the department of labor and industry to see that the provisions of this section are enforced and to institute proceedings against any employer or other person who shall violate its provisions.

History: *1953 c 484 s 1; Ex1967 c 1 s 6*

181.64 FALSE STATEMENTS AS INDUCEMENT TO ENTERING EMPLOYMENT.

It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, doing business in this state, directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this state, or to change from any place in any state, territory, or country to any place in this state, to work in any branch of labor through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it, or failure to state in any advertisement, proposal, or contract for the employment that there is a strike or lockout at the place of the proposed employment, when in fact such strike or lockout then actually exists in such employment at such place. Any such unlawful acts shall be deemed a false advertisement or misrepresentation for the purposes of this section and section 181.65.

History: *(10392) 1913 c 544 s 1; 1923 c 272 s 1*

181.65 PENALTIES.

Any person, firm, association, or corporation violating any provision of section 181.64 and this section shall be guilty of a misdemeanor. Any person who shall be influenced, induced, or persuaded to enter or change employment or change a place of employment through or by means of any of the things prohibited in section 181.64, shall have a right of action for the recovery of all damages sustained in consequence of the false or deceptive representations, false advertising, or false pretenses used to induce the person to enter into or change a place of employment, against any person, firm, association, or corporation directly or indirectly causing such damage; and, in addition to all such actual damages such person may have sustained, shall have the right to recover such reasonable attorneys' fees as the court shall fix, to be taxed as costs in any judgment recovered.

History: *(10393) 1913 c 544 s 2; 1923 c 272 s 2; 1986 c 444*

181.66 EQUAL PAY FOR EQUAL WORK LAW; DEFINITIONS.

Subdivision 1. For the purpose of sections 181.66 to 181.71 the terms defined in this section have the meanings given them.

Subd. 2. "Employer" means any person employing one or more employees, but does not include the state or any municipal corporation or political subdivision of the state having in force a civil service system based on merit, or the federal government.

Subd. 3. "Employee" means an individual who, otherwise than as copartner of the employer or as an independent contractor, renders personal service wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, where services are rendered only partly in this state, an individual is not an employee unless a contract of employment has been entered into, or payments thereunder are ordinarily made or to be made within this state.

Subd. 4. "Wages" means all compensation for performance of services by an employee for an employer whether paid by the employer or another person including cash value of all compensation paid in any medium other than cash.

Subd. 5. "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on the time spent in the performance of such services, or on the number of operations accomplished, or on the quantity produced or handled.

Subd. 6. "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required under section 181.67 to be paid to such employee.

History: *1969 c 143 s 1; 1986 c 444*

181.67 WAGE DISCRIMINATION BASED ON SEX; PROTECTION OF EMPLOYEES INVOLVED IN PROCEEDING.

Subdivision 1. No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate the employer pays to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. Provided, that an employer who is paying a wage rate differential in violation of sections 181.66 to 181.71 shall not, in order to comply with the provisions of sections 181.66 to 181.71, reduce the wage rate of any employee.

Subd. 2. No employer shall discriminate against any employee in regard to hire or tenure of employment or any term or condition of employment because the employee has filed a complaint in a proceeding under sections 181.66 to 181.71, or has testified, or is about to testify, in any investigation or proceedings pursuant to sections 181.66 to 181.71 or in a criminal action pursuant to sections 181.66 to 181.71.

History: *1969 c 143 s 2; 1986 c 444*

181.68 ACTIONS; LIMITATIONS, DAMAGES, ATTORNEY FEES, PARTIES, COMPROMISES.

Subdivision 1. Any employee whose compensation is at a rate that is in violation of section 181.67 has a right of action against an employer for the recovery of the amount of the unpaid wages to which the employee is entitled for the one year period preceding the commencement of the action, and an amount up to the amount of these unpaid wages may be levied at the discretion of the court as exemplary damages.

Subd. 2. In addition to any judgment awarded to the plaintiff, the court shall allow reasonable attorney fees to be taxed as costs.

Subd. 3. The action for the unpaid wages and liquidated damages may be maintained by one or more employees on behalf of themselves or other employees similarly situated.

Subd. 4. An agreement for compensation at a rate less than the rate to which an employee is entitled under sections 181.66 to 181.71 is not a defense to any such action.

History: *1969 c 143 s 3; 1986 c 444*

181.69 [Repealed, 1974 c 432 s 13]

181.70 VIOLATIONS.

A violation of sections 181.66 to 181.71 is a misdemeanor.

History: *1969 c 143 s 5*

181.71 CITATION.

Sections 181.66 to 181.71 may be cited as the equal pay for equal work law.

History: *1969 c 143 s 6*

181.72 [Repealed, 1974 c 432 s 13]

181.73 MIGRANT LABOR; HEALTH INSURANCE.

Subdivision 1. Any person, association, organization, or other group employing five or more persons, full time, part time or otherwise, who come within the definition of recruited migrant laborers as hereafter defined and who are employed or are recruited to be employed in the processing of agricultural produce other than as field labor, shall provide at its expense health care insurance during the period of employment or for illness or injury incurred while employed. Such health care insurance shall be in accordance with such rules as the commissioner of jobs and training may prescribe by rule for each such recruited migrant laborer who is not a resident of Minnesota and who does not have health care insurance meeting the requirements of the rules promulgated by the commissioner of jobs and training.

Subd. 2. No such insurance need be purchased for any employee performing exclusively agricultural labor as defined by section 3121(g) of the Internal Revenue Code of 1954.

Subd. 3. For the purposes of this section, a recruited migrant laborer is a migrant laborer who is offered some type of housing or transportation expense by an employer as an inducement to employment or anticipated employment.

History: *1971 c 752 s 1; 1973 c 254 s 3; 1977 c 430 s 25 subd 1; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444*

181.74 FAILURE OF EMPLOYER TO PAY BENEFITS OR WAGE SUPPLEMENTS, PENALTY.

Subdivision 1. Any employer required under the provisions of an agreement to which the employer is a party to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees, and who refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within 60 days after such payments are required to be made under law or under agreement, is guilty of a gross misdemeanor. If such employer is a corporation, any officer who intentionally violates the provisions of this section shall be guilty of a gross misdemeanor. The institution of bankruptcy proceedings according to law shall be a defense to any criminal action under this section.

Subd. 2. As used in this section, the term "benefits or wage supplements" includes, but is not limited to, reimbursement for expenses; health, welfare, and retirement benefits; and vacation, separation or holiday pay.

History: *1973 c 602 s 1; 1986 c 444*

181.75 POLYGRAPH TESTS OF EMPLOYEES OR PROSPECTIVE EMPLOYEES PROHIBITED.

Subdivision 1. **Prohibition, penalty.** No employer or agent thereof shall directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. No person shall sell to or interpret for an employer or the employer's agent a test that the person knows has been solicited or required by an employer or agent to test the honesty of an employee or prospective employee. An employer or agent or any person knowingly selling, administering, or interpreting tests in violation of this section is guilty of a misdemeanor. If an employee requests a polygraph test any employer or agent administering the test shall inform the employee that taking the test is voluntary.

Subd. 2. **Investigations.** The department of labor and industry shall investigate suspected violations of this section. The department may refer any evidence available concerning violations of this section to the county attorney of the appropriate county, who may with or without such reference, institute the appropriate criminal proceedings under this section.

Subd. 3. **Injunctive relief.** In addition to the penalties provided by law for violation of this section, specifically and generally, whether or not injunctive relief is otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of this section and to require the payment of civil penalties. Whenever it shall appear to the satisfaction of the attorney general that this section has been or is being violated, the attorney general shall be entitled, on behalf of the state, to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging other penalties provided by law.

Subd. 4. **Individual remedies.** In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without a finding of illegality.

History: *1973 c 667 s 1; 1976 c 256 s 1; 1986 c 444*

181.76 DISCLOSURE OF LIE DETECTOR TESTS PROHIBITED.

No person shall disclose that another person has taken a polygraph or any test purporting to test honesty or the results of that test except to the individual tested. If such a test is given after August 1, 1973 and at the employee's request, the results may be given only to persons authorized by the employee to receive the results. A person who violates this section is guilty of a misdemeanor.

History: *1973 c 667 s 2*

181.77 [Repealed, 1976 c 256 s 2]

181.78 AGREEMENTS; TERMS RELATING TO INVENTIONS.

Subdivision 1. Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

Subd. 2. No employer shall require a provision made void and unenforceable by subdivision 1 as a condition of employment or continuing employment.

Subd. 3. If an employment agreement entered into after August 1, 1977 contains a provision requiring the employee to assign or offer to assign any of the employee's rights in any invention to an employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer.

History: *1977 c 47 s 1; 1986 c 444*

181.79 WAGES DEDUCTIONS FOR FAULTY WORKMANSHIP, LOSS, THEFT OR DAMAGE.

Subdivision 1. No employer shall make any deduction, directly or indirectly, from the wages due or earned by any employee, who is not an independent contractor, for lost or stolen property, damage to property, or to recover any other claimed indebtedness running from employee to employer, unless the employee, after the loss has occurred or the claimed indebtedness has arisen, voluntarily authorizes the employer in writing to make the deduction or unless the employee is held liable in a court of competent jurisdiction for the loss or indebtedness. Such authorization shall not be admissible as evidence in any civil or criminal proceeding. Any authorization for a deduction shall set forth the amount to be deducted from the employee's wages during each pay period.

A deduction may not be in excess of the amount established by law as subject to garnishment or execution on wages.

Any agreement entered into between an employer and an employee contrary to this section shall be void. This section shall not apply to the following:

(a) in cases where a contrary provision in a collective bargaining agreement exists;

(b) any rules established by an employer for employees who are commissioned salespeople, where the rules are used for purposes of discipline, by fine or otherwise, in cases where errors or omissions in performing their duties exist; or

(c) in cases where an employee, prior to making a purchase or loan from the employer, voluntarily authorizes in writing that the cost of the purchase or loan shall be deducted from the employee's wages, at regular intervals or upon termination of employment.

Subd. 2. An employer who violates the provisions of this section shall be liable in a civil action brought by the employee for twice the amount of the deduction or credit taken.

History: *1977 c 227 s 1; 1978 c 588 s 1; 1Sp1985 c 13 s 293; 1986 c 444*

181.80 UNION NOTICE OF INJURY OR DEATH.

If a work related death or work related injury which requires a report to the commissioner of labor and industry in accordance with section 176.231, subdivision 1, occurs, a copy of the report shall be mailed by the employer to the employee's local union at the local union office within 48 hours after the employer receives notice of the occurrence.

History: *1977 c 230 s 1*

181.81 DISMISSAL FOR AGE; PROHIBITION; EXCEPTIONS; REMEDIES.

Subdivision 1. **Restriction on mandatory retirement age.** (a) It is unlawful for any private sector employer 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 policymaking position if that employee is entitled to an immediate nonforfeitable 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 the employee no longer can meet the bona fide requirements for the job or position the employer shall give the employee 30 days notice of that 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.

(d) The definitions of "employer" and "employee" in section 363.01 apply to this section.

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.

History: *1978 c 649 s 2; 1979 c 40 s 3; 1986 c 444; 1987 c 282 s 1; 1987 c 284 art 2 s 3*

181.811 MANDATORY RETIREMENT AGE.

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

(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.

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

History: *1978 c 649 s 8; 1979 c 40 s 4; 1981 c 50 s 1; 1987 c 284 art 2 s 4*

181.812 RULES.

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

History: *1979 c 40 s 5*

181.82 BENEFITS BASED ON JOB PERFORMANCE PROHIBITED.

No employer may terminate or threaten to terminate:

(a) group accident and health insurance coverage;

(b) group life insurance coverage; or

(c) pension benefits

for an employee, including a commissioned agent, based on the employee's job performance unless the employer has first given the employee the opportunity to continue coverage by making the same contribution the employer would have to make to continue coverage for the employee.

History: *1978 c 697 s 1*

181.83 CORN DETASSELERS; TERMINATION OF EMPLOYMENT.

Upon termination by the employer of employment to perform corn detasseling, or injury to, or illness of the employee, the employer shall provide transportation to the terminated, injured or ill individual from the place of work to the location at which the employee was picked up on the day of termination, injury or illness. The employer shall pay a terminated, injured or ill individual at the individual's usual rate of pay during the time period between when the individual was terminated, injured or became ill, and

when the employer returned the individual to the location at which the employee was picked up.

History: *1978 c 731 s 2; 1986 c 444*

181.84 CORN DETASSELERS; WORK CONDITIONS.

Notwithstanding any state or federal statute or regulation authorizing sanitary conditions less favorable to the employee than the following requirement, every employer of corn detasselers shall provide a potable water supply in the field and which is easily accessible to all employees with materials or equipment so that the water may be easily drunk in a sanitary manner.

History: *1978 c 731 s 3*

181.85 MIGRANT LABOR; DEFINITIONS.

Subdivision 1. **Generally.** For the purposes of sections 181.85 to 181.90, the terms defined in this section have the meanings given them.

Subd. 2. **Agricultural labor.** "Agricultural labor" means field labor associated with the cultivation and harvest of fruits and vegetables and work performed in processing fruits and vegetables for market.

Subd. 3. **Migrant worker.** "Migrant worker" means an individual at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota.

Subd. 4. **Employer.** "Employer" means a processor of fruits or vegetables that employs, either directly or indirectly through a recruiter, more than 30 migrant workers per day for more than seven days in any calendar year.

Subd. 5. **Recruit.** "Recruit" means to induce an individual, directly or indirectly through an agent or recruiter, to travel to Minnesota to perform agricultural labor by an offer of employment or of the possibility of employment.

Subd. 6. **Recruiter.** "Recruiter" means an individual or person other than an employer that for a fee, either for itself or for another individual or person, solicits, hires, or furnishes migrant workers, excluding members of an individual recruiter's immediate family, for agricultural labor to be performed for an employer in this state. "Recruiter" does not include a public agency providing employment services.

History: *1981 c 212 s 1*

181.86 EMPLOYMENT STATEMENT.

Subdivision 1. **Terms.** An employer that recruits a migrant worker shall provide the migrant worker, at the time the worker is recruited, with a written employment statement which shall state clearly and plainly, in English and Spanish:

(1) The date on which and the place at which the statement was completed and provided to the migrant worker;

(2) The name and permanent address of the migrant worker, of the employer, and of the recruiter who recruited the migrant worker;

(3) The date on which the migrant worker is to arrive at the place of employment, the date on which employment is to begin, the approximate hours of employment, and the minimum period of employment;

(4) The crops and the operations on which the migrant worker will be employed;

(5) The wage rates to be paid;

(6) The payment terms, as provided in section 181.87;

(7) Any deduction to be made from wages; and

(8) Whether housing will be provided.

Subd. 2. **Contract.** The employment statement is an enforceable contract between the migrant worker and the employer.

History: *1981 c 212 s 2*

181.87 PAYMENT TERMS.

Subdivision 1. **Entitled to payment.** Each migrant worker who is recruited by an employer is entitled to payment in accordance with this section.

Subd. 2. **Biweekly pay.** The employer shall pay wages due to the migrant worker at least every two weeks, except on termination, when the employer shall pay within three days.

Subd. 3. **Guaranteed hours.** The employer shall guarantee to each recruited migrant worker a minimum of 70 hours pay for work in any two successive weeks and, should the pay for hours actually offered by the employer and worked by the migrant worker provide a sum of pay less than the minimum guarantee, the employer shall pay the migrant worker the difference within three days after the scheduled payday for the pay period involved. Payment for the guaranteed hours shall be at the hourly wage rate, if any, specified in the employment statement, or the federal minimum wage, whichever is higher. Any pay in addition to the hourly wage rate specified in the employment statement shall be applied against the guarantee. This guarantee applies for the minimum period of employment specified in the employment statement beginning with the date on which employment is to begin as specified in the employment statement. The date on which employment is to begin may be changed by the employer by written, telephonic, or telegraphic notice to the migrant worker, at the worker's last known address, no later than ten days prior to the previously stated beginning date. The migrant worker shall contact the recruiter to obtain the latest information regarding the date upon which employment is to begin no later than five days prior to the previously stated beginning date. This guarantee shall be reduced, when there is no work available for a period of seven or more consecutive days during any two week period subsequent to the commencement of work, by five hours pay for each such day, when the unavailability of work is caused by climatic conditions or an act of God, provided that the employer pays the migrant worker, on the normal payday, the sum of $5 for each such day.

Subd. 4. **Worker fired or quits.** If the migrant worker quits or is fired for cause prior to the completion of the operation for which hired, the migrant worker is entitled to no further guarantee under subdivision 3 from that employer. If the migrant worker quits or is fired for cause before the completion of a two-week pay period, the worker is entitled to no guarantee for that period.

Subd. 5. **Housing vacated.** The employer may require the migrant worker to vacate the provided housing on final payment of all wages.

Subd. 6. **Refusal to work; illness.** If on any day for which work is offered the migrant worker refuses or because of illness or disability is unable to perform work which is offered, the employer may reduce the guarantee available in the pay period by the number of hours of work actually offered by the employer that day.

Subd. 7. **Statement itemizing deductions from wages.** The employer shall provide a written statement at the time wages are paid clearly itemizing each deduction from wages.

History: *1981 c 212 s 3; 1986 c 444*

181.88 RECORD KEEPING.

Every employer subject to the provisions of sections 181.85 to 181.90 shall maintain complete and accurate records of the names of, the daily hours worked by, the rate of pay for and the wages paid each pay period to every individual migrant worker recruited by that employer, and shall preserve the records for a period of at least three years.

History: *1981 c 212 s 4*

181.89 CIVIL ACTIONS.

Subdivision 1. **May bring action.** Any migrant worker claiming to be aggrieved by a violation of sections 181.86 to 181.88 may bring a civil action for damages and injunctive relief against the worker's employer.

Subd. 2. **Judgment; damages.** If the court finds that any defendant has violated the provisions of sections 181.86 to 181.88, the court shall enter judgment for the actual damages incurred by the plaintiff or the appropriate penalty as provided by this subdivision, whichever is greater. The court may also award court costs and a reasonable attorney's fee. The penalties shall be as follows:

(1) Whenever the court finds that an employer has violated the record keeping requirements of section 181.88, $50;

(2) Whenever the court finds that an employer has recruited a migrant worker without providing a written employment statement as provided in section 181.86, subdivision 1, $250;

(3) Whenever the court finds that an employer has recruited a migrant worker after having provided a written employment statement, but finds that the employment statement fails to comply with the requirement of section 181.86, subdivision 1 or section 181.87, $250;

(4) Whenever the court finds that an employer has failed to comply with the terms of an employment statement which the employer has provided to a migrant worker or has failed to comply with any payment term required by section 181.87, $250;

(5) Whenever the court finds that an employer has failed to pay wages to a migrant worker within a time period set forth in section 181.87, subdivision 2 or 3, $250; and

(6) Whenever penalties are awarded, they shall be awarded severally in favor of each migrant worker plaintiff and against each defendant found liable.

History: *1981 c 212 s 5; 1986 c 444*

181.90 USE WAGNER-PEYSER SYSTEM.

An employer who uses the federal work clearance order system under the Wagner-Peyser Act of 1933, Statutes at Large, volume 48, page 113, as amended, is deemed to recruit the migrant workers who are thereby induced to travel to Minnesota to perform agricultural labor. The provisions of sections 181.85 to 181.89 shall not be construed to prohibit the use of the work clearance order system by an employer who recruits migrant workers, but use of the federal work clearance order system by an employer shall not excuse the employer from compliance with sections 181.85 to 181.89.

History: *1981 c 212 s 6*

181.91 PRESERVATION OF EXISTING REMEDIES.

The remedies provided in sections 181.85 to 181.90 are not exclusive, but are in addition to remedies provided in other law.

History: *1981 c 212 s 7*

181.92 LEAVES FOR ADOPTIVE PARENTS.

An employer who permits paternity or maternity time off to a biological father or mother shall, upon request, grant time off, with or without pay, to an adoptive father or mother. The minimum period of this time off shall be four weeks, or, if the employer has an established policy of time off for a biological parent which sets a period of time off of less than four weeks, that period of time shall be the minimum period for an adoptive parent. The period of time off shall, at the direction of the adoptive parent, begin before, or at the time of, the child's placement in the adoptive parent's home, and shall be for the purpose of arranging the child's placement or caring for the child after placement. An employer shall not penalize an employee for requesting or obtaining time off according to this section.

History: *1983 c 266 s 1*

181.93 NOTICE TO EMPLOYEES AND APPLICANTS OF BANKRUPTCY.

Subdivision 1. **Notice.** An employer shall immediately notify all of its employees in writing that it has filed a petition for bankruptcy or has had an involuntary bankruptcy petition filed against it.

An employer shall, in writing, notify all persons offered jobs with the employer that it has filed a petition for bankruptcy or has had an involuntary bankruptcy petition filed against it. The notice shall be given at the time of the job offer and is required if the case initiated by the petition has not been closed.

For purposes of this subdivision, an employer includes a "debtor in possession" and excludes a bankruptcy "trustee" as those terms are used under federal bankruptcy law.

Subd. 2. **Violation.** A violation of subdivision 1 is a misdemeanor.

History: *1987 c 38 s 1*

NOTICE OF TERMINATION

181.931 DEFINITIONS.

Subdivision 1. **Generally.** For the purpose of sections 181.931 to 181.935 the terms defined in this section have the meanings given them.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire in Minnesota for an employer. Employee does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means any person having one or more employees in Minnesota and includes the state and any political subdivision of the state.

History: *1987 c 76 s 1*

181.932 DISCLOSURE OF INFORMATION BY EMPLOYEES.

Subdivision 1. **Prohibited action.** An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(a) the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;

(b) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry; or

(c) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason.

Subd. 2. **Disclosure of identity.** No public official or law enforcement official shall disclose, or cause to disclose, the identity of any employee making a report or providing information under subdivision 1 without the employee's consent unless the investigator determines that disclosure is necessary for prosecution. If the disclosure is necessary for prosecution, the employee shall be informed prior to the disclosure.

Subd. 3. **False disclosures.** This section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.

Subd. 4. **Collective bargaining rights.** This section does not diminish or impair the rights of a person under any collective bargaining agreement.

Subd. 5. **Confidential information.** This section does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

History: *1987 c 76 s 2; 1988 c 659 s 2*

181.933 NOTICE OF TERMINATION.

Subdivision 1. **Notice required.** An employee who has been involuntarily terminated may, within five working days following such termination, request in writing that

the employer inform the employee of the reason for the termination. Within five working days following receipt of such request, an employer shall inform the terminated employee in writing of the truthful reason for the termination.

Subd. 2. **Defamation action prohibited.** No communication of the statement furnished by the employer to the employee under subdivision 1 may be made the subject of any action for libel, slander, or defamation by the employee against the employer.

History: *1987 c 76 s 3*

181.934 EMPLOYEE NOTICE.

The department of labor and industry shall promulgate rules for notification of employees by employers of an employee's rights under sections 181.931 to 181.935.

History: *1987 c 76 s 4*

181.935 INDIVIDUAL REMEDIES; PENALTY.

(a) In addition to any remedies otherwise provided by law, an employee injured by a violation of section 181.932 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court.

(b) An employer who failed to notify, as required under section 181.933 or 181.934, an employee injured by a violation of section 181.932 is subject to a civil penalty of $25 per day per injured employee not to exceed $750 per injured employee.

History: *1987 c 76 s 5*

181.937 REPRISALS FOR FAILURE TO CONTRIBUTE; CIVIL ACTION.

No employer shall engage in any reprisal against an employee for declining to participate in contributions or donations to charities or community organizations, including contributions to the employer itself. "Employer" means any person having one or more employees in Minnesota and includes the state, the University of Minnesota, and any political subdivisions of the state. An employee injured by a violation of this section may bring an action for compensatory damages, injunctive or other equitable relief, attorney's fees and costs. For purposes of this section "reprisal" means any discipline; any form of intimidation, harassment, or threat; or any penalty regarding the employee's compensation, terms, conditions, location, or privileges of employment.

History: *1988 c 455 s 1*

PARENTING LEAVE

181.940 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 181.940 to 181.944, the terms defined in this section have the meanings given them.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire for an employer from whom a leave is requested under sections 181.940 to 181.944, for at least 12 consecutive months preceding the request, and for an average of 20 or more hours per week during those 12 months, and includes all individuals employed at any site owned or operated by the employer. Employee does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means a person or entity that employs 21 or more employees at at least one site, except that, for purposes of the school leave allowed under section 181.9412, employer means a person or entity that employs one or more employees in Minnesota. The term includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, or other governmental subdivision.

Subd. 4. **Child.** "Child" means an individual under 18 years of age or an individual under age 20 who is still attending secondary school.

History: *1987 c 359 s 1; 1990 c 577 s 1*

181.941 PARENTING LEAVE.

Subdivision 1. **Six-week leave; birth or adoption.** An employer must grant an unpaid leave of absence to an employee who is a natural or adoptive parent in conjunction with the birth or adoption of a child. The length of the leave shall be determined by the employee, but may not exceed six weeks, unless agreed to by the employer.

Subd. 2. **Start of leave.** The leave shall begin at a time requested by the employee. The employer may adopt reasonable policies governing the timing of requests for unpaid leave. The leave may begin not more than six weeks after the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave may not begin more than six weeks after the child leaves the hospital.

Subd. 3. **No employer retribution.** An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section.

Subd. 4. **Continued insurance.** The employer must continue to make coverage available to the employee while on leave of absence under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents. Nothing in this section requires the employer to pay the costs of the insurance or health care while the employee is on leave of absence.

History: *1987 c 359 s 2; 1990 c 577 s 2*

181.9412 SCHOOL CONFERENCE AND ACTIVITIES LEAVE.

(a) An employer must grant an employee leave of up to a total of 16 hours during any school year to attend school conferences or classroom activities related to the employee's child, provided the conferences or classroom activities cannot be scheduled during nonwork hours. When the leave cannot be scheduled during nonwork hours and the need for the leave is foreseeable, the employee must provide reasonable prior notice of the leave and make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

(b) Nothing in this section requires that the leave be paid; except that, an employee may substitute any accrued paid vacation leave or other appropriate paid leave for any part of the leave under this section.

History: *1990 c 577 s 3*

181.9413 SICK CHILD CARE LEAVE.

An employee may use personal sick leave benefits provided by the employer for absences due to an illness of the employee's child for such reasonable periods as the employee's attendance with the child may be necessary, on the same terms the employee is able to use sick leave benefits for the employee's own illness. This section applies only to sick leave benefits payable to the employee from the employer's general assets.

History: *1990 c 577 s 4*

181.942 REINSTATEMENT AFTER LEAVE.

Subdivision 1. **Comparable position.** (a) An employee returning from a leave of absence under section 181.941 is entitled to return to employment in the employee's former position or in a position of comparable duties, number of hours, and pay. An employee returning from a leave of absence longer than one month must notify a supervisor at least two weeks prior to return from leave. An employee returning from a leave under section 181.9412 or 181.9413 is entitled to return to employment in the employee's former position.

(b) If, during a leave under sections 181.940 to 181.944, the employer experiences a layoff and the employee would have lost a position had the employee not been on leave, pursuant to the good faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, the employee is not entitled to reinstatement in the former or comparable position. In such circumstances, the

employee retains all rights under the layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

Subd. 2. **Pay; benefits; on return.** An employee returning from a leave of absence under sections 181.940 to 181.944 is entitled to return to employment at the same rate of pay the employee had been receiving when the leave commenced, plus any automatic adjustments in the employee's pay scale that occurred during leave period. The employee returning from a leave is entitled to retain all accrued preleave benefits of employment and seniority, as if there had been no interruption in service; provided that nothing in sections 181.940 to 181.944 prevents the accrual of benefits or seniority during the leave pursuant to a collective bargaining or other agreement between the employer and employees.

Subd. 3. **Part-time return.** An employee, by agreement with the employer, may return to work part time during the leave period without forfeiting the right to return to employment at the end of the leave period, as provided in sections 181.940 to 181.944.

History: *1987 c 359 s 3; 1990 c 577 s 5*

181.943 RELATIONSHIP TO OTHER LEAVE.

(a) The length of parental leave provided under section 181.941 may be reduced by any period of paid parental or disability leave, but not accrued sick leave, provided by the employer, so that the total leave does not exceed six weeks, unless agreed to by the employer.

(b) Nothing in sections 181.940 to 181.943 prevents any employer from providing leave benefits in addition to those provided in sections 181.940 to 181.944 or otherwise affects an employee's rights with respect to any other employment benefit.

History: *1987 c 359 s 4; 1988 c 659 s 1; 1990 c 577 s 6*

181.944 INDIVIDUAL REMEDIES.

In addition to any other remedies provided by law, a person injured by a violation of sections 181.940 to 181.943 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by a court.

History: *1987 c 359 s 5; 1990 c 577 s 7*

BONE MARROW DONATION LEAVE

181.945 LEAVE FOR BONE MARROW DONATIONS.

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

(b) "Employee" means a person who performs services for hire for an employer, for an average of 20 or more hours per week, and includes all individuals employed at any site owned or operated by an employer. Employee does not include an independent contractor.

(c) "Employer" means a person or entity that employs 20 or more employees at at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, or other governmental subdivision.

Subd. 2. **Leave.** An employer must grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The combined length of the leaves shall be determined by the employee, but may not exceed 40 work hours, unless agreed to by the employer. The employer may require verification by a physician of the purpose and length of each leave requested by the employee to donate bone marrow. If there is a medical determination that the employee does not qualify

as a bone marrow donor, the paid leave of absence granted to the employee prior to that medical determination is not forfeited.

Subd. 3. **No employer sanctions.** An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section.

Subd. 4. **Relationship to other leave.** This section does not prevent an employer from providing leave for bone marrow donations in addition to leave allowed under this section. This section does not affect an employee's rights with respect to any other employment benefit.

History: *1990 c 536 s 2*

DRUG AND ALCOHOL TESTING IN THE WORKPLACE

181.950 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 181.950 to 181.957, the terms and phrases defined in this section have the meanings given them.

Subd. 2. **Confirmatory test; confirmatory retest.** "Confirmatory test" and "confirmatory retest" mean a drug or alcohol test that uses a method of analysis approved by the commissioner under section 181.953, subdivision 1, as being reliable for providing specific data as to the drugs, alcohol, or their metabolites detected in an initial screening test.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the department of health.

Subd. 4. **Drug.** "Drug" means a controlled substance as defined in section 152.01, subdivision 4.

Subd. 5. **Drug and alcohol testing.** "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample approved by the commissioner under section 181.953, subdivision 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

Subd. 6. **Employee.** "Employee" means a person, independent contractor, or person working for an independent contractor who performs services for compensation, in whatever form, for an employer.

Subd. 7. **Employer.** "Employer" means a person or entity located or doing business in this state and having one or more employees, and includes the state and all political or other governmental subdivisions of the state.

Subd. 8. **Initial screening test.** "Initial screening test" means a drug or alcohol test which uses a method of analysis approved by the commissioner under section 181.953, subdivision 1, as being capable of providing data as to general classes of drugs, alcohol, or their metabolites.

Subd. 9. **Job applicant.** "Job applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of an employer, and includes a person who has received a job offer made contingent on the person passing drug or alcohol testing.

Subd. 10. **Positive test result.** "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels set by the commissioner under section 181.953, subdivision 1.

Subd. 11. **Random selection basis.** "Random selection basis" means a mechanism for selection of employees that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

Subd. 12. **Reasonable suspicion.** "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Subd. 13. **Safety-sensitive position.** "Safety-sensitive position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

History: *1987 c 388 s 1*

181.951 AUTHORIZED DRUG AND ALCOHOL TESTING.

Subdivision 1. **Limitations on testing.** (a) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section.

(b) An employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in section 181.952; and, is conducted by a testing laboratory licensed under section 181.953, subdivision 1, except as otherwise permitted under that subdivision, or by a nonlicensed laboratory as transitionally allowed under section 181.953, subdivision 2.

(c) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis.

Subd. 2. **Job applicant testing.** An employer may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, as provided in section 181.953, subdivision 11, the employer shall inform the job applicant of the reason for its action.

Subd. 3. **Routine physical examination testing.** An employer may request or require an employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

Subd. 4. **Random testing.** An employer may request or require only employees in safety-sensitive positions to undergo drug and alcohol testing on a random selection basis.

Subd. 5. **Reasonable suspicion testing.** An employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee:

(1) is under the influence of drugs or alcohol;

(2) has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy;

(3) has sustained a personal injury, as that term is defined in section 176.011, subdivision 16, or has caused another employee to sustain a personal injury; or

(4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Subd. 6. **Treatment program testing.** An employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

Subd. 7. **No legal duty to test.** Employers do not have a legal duty to request or require an employee or job applicant to undergo drug or alcohol testing as authorized in this section.

History: *1987 c 388 s 2; 1988 c 536 s 1*

181.952 POLICY CONTENTS; PRIOR WRITTEN NOTICE.

Subdivision 1. **Contents of the policy.** An employer's drug and alcohol testing policy must, at a minimum, set forth the following information:

(1) the employees or job applicants subject to testing under the policy;

(2) the circumstances under which drug or alcohol testing may be requested or required;

(3) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal;

(4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;

(5) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and

(6) any other appeal procedures available.

Subd. 2. **Notice.** An employer shall provide written notice of its drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. An employer shall also post notice in an appropriate and conspicuous location on the employer's premises that the employer has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the employer's personnel office or other suitable locations.

History: *1987 c 388 s 3*

181.953 RELIABILITY AND FAIRNESS SAFEGUARDS.

Subdivision 1. **Use of licensed laboratory required.** (a) An employer who requests or requires an employee or job applicant to undergo drug or alcohol testing shall use the services of a testing laboratory licensed by the commissioner under this subdivision, except that, a breath test as an initial screening test for alcohol may be performed by a medical clinic, hospital, or other medical facility not owned or operated by the employer that does not meet the licensing requirements of this section, provided that the breath test meets the standards or requirements adopted by rule under paragraph (b), except clause (1), and any confirmatory test is performed according to the requirements of sections 181.950 to 181.957 and the rules adopted thereunder.

(b) The commissioner shall adopt rules by January 1, 1988, governing:

(1) standards for licensing, suspension, and revocation of a license;

(2) body component samples that are appropriate for drug and alcohol testing;

(3) procedures for taking a sample that ensure privacy to employees and job applicants to the extent practicable, consistent with preventing tampering with the sample;

(4) methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial screening tests and confirmatory tests;

(5) threshold detection levels for drugs, alcohol, or their metabolites for purposes of determining a positive test result;

(6) chain-of-custody procedures to ensure proper identification, labeling, and handling of the samples being tested; and

(7) retention and storage procedures to ensure reliable results on confirmatory tests or confirmatory retests of original samples.

(c) With respect to paragraph (b), clause (4), the rules must allow testing for alcohol by breath test as an initial screening test, provided that the results are confirmed by blood analysis.

(d) The commissioner shall also grant licenses to laboratories conducting drug and alcohol testing that are located in another state, provided that either: (1) the laboratory is licensed by the other state or by a federal agency to conduct drug and alcohol testing

and the other state's or federal agency's rules governing standards, methods, and procedures meet or exceed those adopted under this subdivision; or (2) the laboratory has agreed in writing with the commissioner to comply with the rules adopted under this subdivision. A laboratory licensed under this paragraph must also, as a condition of obtaining and retaining a license, agree in writing with the commissioner to comply with the other requirements for laboratories set forth in sections 181.950 to 181.954 and to be subject to the remedies set forth in section 181.956.

(e) The commissioner shall charge laboratories an annual license fee. The fee may vary depending on the number of Minnesota employee samples tested annually at a laboratory. Fee receipts must be deposited in the state treasury and credited to a special account and are appropriated to the commissioner to administer this subdivision and to purchase or lease laboratory equipment as accumulated fee receipts make equipment purchases or leases possible. Notwithstanding section 144.122, the commissioner shall set the license fee at an amount so that the total fees collected will recover the costs of administering this subdivision and allow an additional amount to be credited to the special account each year sufficient to allow the commissioner to obtain appropriate laboratory equipment for use in administering this subdivision by July 1, 1994.

Subd. 2. **Transitional laboratory requirements.** Before rules are adopted and licenses issued under subdivision 1, an employer may use the services of a nonlicensed testing laboratory that agrees in writing with the commissioner to comply with the following requirements:

(1) The director of the laboratory must be a full-time employee of the laboratory and must possess a doctoral or master's degree in biological or medical science and have at least three years experience in an analytical toxicology laboratory.

(2) The laboratory must be participating in and continuing to demonstrate satisfactory performance in the drug proficiency testing program of the college of American pathology or American association for clinical chemists.

(3) The drug and alcohol testing must be limited to analysis of a sample of blood or urine from the employer or job applicant subject to testing; except that testing for alcohol may include a breath test as an initial screening test, provided that the results are confirmed by blood analysis. A breath test may be performed by a laboratory that does not meet the requirements of this subdivision, as allowed under subdivision 1.

(4) The methods of analysis for drug and alcohol testing are limited to any combination of methods using immuno-chemical technology or chromatography for initial screening tests, except as otherwise allowed under clause (3). Confirmation must be by gas chromatography/mass spectrometry; except that, where gas chromatography/mass spectrometry is not the scientifically accepted method of choice, the test must be confirmed by a method using some form of chromatography.

(5) The laboratory must have in writing and use laboratory chain-of-custody procedures that ensure reliable and properly handled and identified testing results.

(6) All initial screening test, confirmatory test, and confirmatory retest results must be reviewed and certified as accurate by a qualified scientist.

(7) A test report must indicate the drugs, alcohol, or their metabolites tested for and whether the test produced negative or positive test results.

(8) The laboratory must provide the commissioner with information requested by the commissioner regarding the laboratory's current operations and activities relating to drug and alcohol testing.

(9) The laboratory must agree to comply with the requirements for laboratories set forth in sections 181.950 to 181.954 and to be subject to the remedies set forth in section 181.956.

Subd. 3. **Laboratory testing, reporting, and sample retention requirements.** A testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test. A laboratory shall disclose to the employer a written test result report for each sample tested within three working days after a negative test result on an initial screening test or, when the initial screening test produced a positive

test result, within three working days after a confirmatory test. A laboratory shall retain and properly store for at least six months all samples that produced a positive test result.

Subd. 4. **Prohibitions on employers.** An employer may not conduct drug or alcohol testing of its own employees and job applicants using a testing laboratory owned and operated by the employer; except that, one agency of the state may test the employees of another agency of the state. Except as provided in subdivision 9, an employer may not request or require an employee or job applicant to contribute to, or pay the cost of, drug or alcohol testing under sections 181.950 to 181.954.

Subd. 5. **Employer chain-of-custody procedures.** An employer shall comply with the rules adopted by the commissioner under subdivision 1 pertaining to chain-of-custody procedures. Before those rules are adopted, an employer shall establish its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested.

Subd. 6. **Rights of employees and job applicants.** (a) Before requesting an employee or job applicant to undergo drug or alcohol testing, an employer shall provide the employee or job applicant with a form, developed by the employer, on which to (1) acknowledge that the employee or job applicant has seen the employer's drug and alcohol testing policy, and (2) indicate any over-the-counter or prescription medications that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.

(b) Within three working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the employer, in addition to any information already submitted under paragraph (a), to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense as provided under subdivision 9.

Subd. 7. **Notice of test results.** Within three working days after receipt of a test result report from the testing laboratory, an employer shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of (1) a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test and (2) the right provided in subdivision 8. In the case of a positive test result on a confirmatory test, the employer shall also, at the time of this notice, inform the employee or job applicant in writing of the rights provided in subdivisions 6, paragraph (b), 9, and either subdivision 10 or 11, whichever applies.

Subd. 8. **Right to test result report.** An employee or job applicant has the right to request and receive from the employer a copy of the test result report on any drug or alcohol test.

Subd. 9. **Confirmatory retests.** An employee or job applicant may request a confirmatory retest of the original sample at the employee's or job applicant's own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the employee or job applicant shall notify the employer in writing of the employee's or job applicant's intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the employer shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or transfer the sample to another laboratory licensed under subdivision 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that the chain-of-custody procedures adopted by the commissioner under subdivision 1 are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

Subd. 10. **Limitations on employee discharge, discipline, or discrimination.** (a) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

(b) In addition to the limitation under paragraph (a), an employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met:

(1) the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and

(2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

(c) Notwithstanding paragraph (a), an employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, coemployees, or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

(d) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to subdivision 6 unless the employee was under an affirmative duty to provide the information before, upon, or after hire.

(e) An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

Subd. 11. **Limitation on withdrawal of job offer.** If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

History: *1987 c 384 art 3 s 32; 1987 c 388 s 4; 1988 c 536 s 2,3*

181.954 PRIVACY, CONFIDENTIALITY, AND PRIVILEGE SAFEGUARDS.

Subdivision 1. **Privacy limitations.** A laboratory may only disclose to the employer test result data regarding the presence or absence of drugs, alcohol, or their metabolites in a sample tested.

Subd. 2. **Confidentiality limitations.** Test result reports and other information acquired in the drug or alcohol testing process are, with respect to private sector employees and job applicants, private and confidential information, and, with respect to public sector employees and job applicants, private data on individuals as that phrase is defined in chapter 13, and may not be disclosed by an employer or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

Subd. 3. **Exceptions to privacy and confidentiality disclosure limitations.** Notwithstanding subdivisions 1 and 2, evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under chapter 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

Subd. 4. **Privilege.** Positive test results from an employer drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

History: *1987 c 388 s 5*

181.955 CONSTRUCTION.

Subdivision 1. **Freedom to collectively bargain.** Sections 181.950 to 181.954 shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in those sections.

Subd. 2. **Employee protections under existing collective bargaining agreements.** Sections 181.950 to 181.954 shall not be construed to interfere with or diminish any employee protections relating to drug and alcohol testing already provided under collective bargaining agreements in effect on the effective date of those sections that exceed the minimum standards and requirements for employee protection provided in those sections.

History: *1987 c 388 s 6*

181.956 REMEDIES.

Subdivision 1. **Exhaustion.** An employee or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided that, an employee's right to bring an action under this section is not affected by a decision of a collective bargaining agent not to pursue a grievance.

Subd. 2. **Damages.** In addition to any other remedies provided by law, an employer or laboratory that violates sections 181.950 to 181.954 is liable to an employee or job applicant injured by the violation in a civil action for any damages allowable at law. If a violation is found and damages awarded, the court may also award reasonable attorney fees for a cause of action based on a violation of sections 181.950 to 181.954 if the court finds that the employer knowingly or recklessly violated sections 181.950 to 181.954.

Subd. 3. **Injunctive relief.** An employee or job applicant, a state, county, or city attorney, or a collective bargaining agent who fairly and adequately represents the interests of the protected class has standing to bring an action for injunctive relief requesting the district court to enjoin an employer or laboratory that commits or proposes to commit an act in violation of sections 181.950 to 181.954.

Subd. 4. **Other equitable relief.** Upon finding a violation of sections 181.950 to 181.954, or as part of injunctive relief granted under subdivision 3, a court may, in its discretion, grant any other equitable relief it considers appropriate, including ordering the injured employee or job applicant reinstated with back pay.

Subd. 5. **Retaliation prohibited.** An employer may not retaliate against an employee for asserting rights and remedies provided in sections 181.950 to 181.954.

History: *1987 c 388 s 7*

181.957 FEDERAL PREEMPTION.

Subdivision 1. **Excluded employees and job applicants.** Except as provided under subdivision 2, the employee and job applicant protections provided under sections 181.950 to 181.956 do not apply to employees and job applicants where the specific work performed requires those employees and job applicants to be subject to drug and alcohol testing pursuant to:

(1) federal regulations that specifically preempt state regulation of drug and alcohol testing with respect to those employees and job applicants;

(2) federal regulations or requirements necessary to operate federally regulated facilities;

(3) federal contracts where the drug and alcohol testing is conducted for security, safety, or protection of sensitive or proprietary data; or

(4) state agency rules that adopt federal regulations applicable to the interstate component of a federally regulated industry, and the adoption of those rules is for the purpose of conforming the nonfederally regulated intrastate component of the industry to identical regulation.

Subd. 2. **Exclusion limited.** Employers and testing laboratories must comply with the employee and job applicant protections provided under sections 181.950 to 181.956, with respect to employees or job applicants otherwise excluded under subdivision 1 from those protections, to the extent that the provisions of sections 181.950 to 181.956 are not inconsistent with or specifically preempted by the federal regulations, contract, or requirements applicable to drug and alcohol testing.

History: *1987 c 388 s 8*

REVIEW OF PERSONNEL RECORD BY EMPLOYEE

181.960 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of sections 181.960 to 181.966, the following terms have the meanings given in this section.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire for an employer, provided that the services have been performed predominately within this state. The term includes any person who has been separated from employment for less than one year. The term does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means a person who has 20 or more employees. Employer does not include a state agency, statewide system, political subdivision, or advisory board or commission that is subject to chapter 13.

Subd. 4. **Personnel record.** "Personnel record," to the extent maintained by an employer, means: any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record. The term does not include:

(1) written references respecting the employee, including letters of reference supplied to an employer by another person;

(2) information relating to the investigation of a violation of a criminal or civil statute by an employee or an investigation of employee conduct for which the employer may be liable, unless and until:

(i) the investigation is completed and, in cases of an alleged criminal violation, the employer has received notice from the prosecutor that no action will be taken or all criminal proceedings and appeals have been exhausted; and

(ii) the employer takes adverse personnel action based on the information contained in the investigation records;

(3) education records, pursuant to section 513(a) of title 5 of the Family Educational Rights and Privacy Act of 1974, United States Code, title 20, section 1232g, that are maintained by an educational institution and directly related to a student;

(4) results of employer testing, except that the employee may see a cumulative total test score for a section of the test or for the entire test;

(5) information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans, and job assignments;

(6) written comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon the other person's privacy;

(7) written comments or data kept by the employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the sole possession of the author of the record;

(8) privileged information or information that is not discoverable in a workers' compensation, grievance arbitration, administrative, judicial, or quasi-judicial proceeding;

(9) any portion of a written or transcribed statement by a coworker of the employee that concerns the job performance or job-related misconduct of the employee that discloses the identity of the coworker by name, inference, or otherwise; and

(10) medical reports and records, including reports and records that are available to the employee from a health care services provider pursuant to section 144.335.

History: *1989 c 349 s 1*

181.961 REVIEW OF PERSONNEL RECORD BY EMPLOYEE.

Subdivision 1. **Right to review; frequency.** Upon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record. An employer is not required to provide an employee with an opportunity to review the employee's personnel record if the employee has reviewed the personnel record during the previous six months; except that, upon separation from employment, an employee may review the employee's personnel record only once at any time within one year after separation.

Subd. 2. **Time; location; condition.** The employer shall comply with a written request pursuant to subdivision 1 no later than seven working days after receipt of the request if the personnel record is located in this state, or no later than 14 working days after receipt of the request if the personnel record is located outside this state. The personnel record or an accurate copy must be made available for review by the employee during the employer's normal hours of operation at the employee's place of employment or other reasonably nearby location, but need not be made available during the employee's working hours. The employer may require that the review be made in the presence of the employer or the employer's designee.

Subd. 3. **Good faith.** The employer may deny the employee the right to review the employee's personnel record if the employee's request to review is not made in good faith. The burden of proof that the request to review is not made in good faith is on the employer.

History: *1989 c 349 s 2*

181.962 REMOVAL OR REVISION OF INFORMATION.

Subdivision 1. **Agreement; failure to agree; copy; position statement.** (a) If an employee disputes specific information contained in the employee's personnel record:

(1) upon the written request of the employee, the employer shall provide a copy of the disputed information, and may charge a fee for the copy not to exceed the actual cost of making and compiling the copy;

(2) the employer and the employee may agree to remove or revise the disputed information; and

(3) if an agreement is not reached, the employee may submit a written statement specifically identifying the disputed information and explaining the employee's position.

(b) The employee's position statement may not exceed five written pages. The position statement must be included along with the disputed information for as long as that information is maintained in the employee's personnel record. A copy of the position statement must also be provided to any other person who receives a copy of the disputed information from the employer after the position statement is submitted.

Subd. 2. **Defamation actions prohibited.** (a) No communication by an employee of information obtained through a review of the employee's personnel record may be

made the subject of any action by the employee for libel, slander, or defamation, unless the employee requests that the employer comply with subdivision 1 and the employer fails to do so.

(b) No communication by an employer of information contained in an employee's personnel record after the employee has exercised the employee's right to review pursuant to section 181.961 may be made the subject of any common law civil action for libel, slander, or defamation unless:

(1) the employee has disputed specific information contained in the personnel record pursuant to subdivision 1;

(2) the employer has refused to agree to remove or revise the disputed information;

(3) the employee has submitted a written position statement as provided under subdivision 1; and

(4) the employer either (i) has refused or negligently failed to include the employee's position statement along with the disputed information or thereafter provide a copy of the statement to other persons as required under subdivision 1, or (ii) thereafter communicated the disputed information with knowledge of its falsity or in reckless disregard of its falsity.

(c) A common law civil action for libel, slander, or defamation based upon a communication of disputed information contained in an employee's personnel record is not prohibited if the communication is made after the employer and the employee reach an agreement to remove or revise disputed information and the communication is not consistent with the agreement.

History: *1989 c 349 s 3*

181.963 USE OF OMITTED PERSONNEL RECORD.

Information properly belonging in an employee's personnel record that was omitted from the personnel record provided by an employer to an employee for review pursuant to section 181.961 may not be used by the employer in an administrative, judicial, or quasi-judicial proceeding, unless the employer did not intentionally omit the information and the employee is given a reasonable opportunity to review the omitted information prior to its use.

History: *1989 c 349 s 4*

181.964 RETALIATION PROHIBITED.

An employer may not retaliate against an employee for asserting rights or remedies provided in sections 181.960 to 181.965.

History: *1989 c 349 s 5*

181.965 REMEDIES.

Subdivision 1. **General.** In addition to other remedies provided by law, if an employer violates a provision of sections 181.960 to 181.964, the employee may bring a civil action to compel compliance and for the following relief:

(1) for a violation of sections 181.960 to 181.963, actual damages only, plus costs; and

(2) for a violation of section 181.964, actual damages, back pay, and reinstatement or other make-whole, equitable relief, plus reasonable attorney fees.

Subd. 2. **Limitations period.** Any civil action maintained by the employee under this section must be commenced within one year of the actual or constructive discovery of the alleged violation.

History: *1989 c 349 s 6*

181.966 ADDITIONAL RIGHT OF ACCESS TO RECORDS.

Sections 181.960 to 181.965 do not prevent an employer from providing additional rights to employees and do not diminish a right of access to records under chapter 13.

History: *1989 c 349 s 7*