

CHAPTER 181

EMPLOYMENT; WAGES, CONDITIONS, HOURS, RESTRICTIONS

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181.721 CONSTRUCTION BID EQUITY.

Subdivision 1. **Workers' compensation and unemployment contribution costs.** A successful bidder on a project must provide coverage for workers' compensation and unemployment compensation for its employees required under chapters 176 and 268, respectively, and other state and federal laws.

Subd. 2. **Employee status.** Employee status shall be determined using the same tests and in the same manner as employee status is determined under the applicable workers' compensation and unemployment insurance laws and rules.

Subd. 3. **Scope.** This section applies to any nonresidential project for the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a building or structure.

Subd. 4. **Civil remedy.** A person injured by a violation of subdivision 1 may bring an action for damages against the violator. There is a rebuttable presumption that a losing bidder on a project on which a violation of subdivision 1 has occurred has suffered damages in an amount equal to the profit it projected to make on its bid. The court may award attorney fees, costs, and disbursements to a party recovering under this subdivision.

Subd. 5. **Penalty.** In addition to any other penalties provided by law for the failure to obtain required workers' compensation coverage or the failure to make unemployment insurance contributions, a person violating subdivision 1 is guilty of a misdemeanor.

History: 1991 c 260 s 1

181.940 DEFINITIONS.

[For text of subd 1, see M.S.1990]

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:

(1) at least 12 consecutive months immediately preceding the request; and

(2) for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during those 12 months.

Employee includes all individuals employed at any site owned or operated by the employer but does not include an independent contractor.

[For text of subds 3 and 4, see M.S.1990]

History: 1991 c 268 s 1

181.9413 SICK OR INJURED CHILD CARE LEAVE.

(a) An employee may use personal sick leave benefits provided by the employer for absences due to an illness of or injury to 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 or

injury. This section applies only to personal sick leave benefits payable to the employee from the employer's general assets.

(b) For purposes of this section, "personal sick leave benefits" means time accrued and available to an employee to be used as a result of absence from work due to personal illness or injury, but does not include short-term or long-term disability or other salary continuation benefits.

History: 1991 c 268 s 2

181.950 DEFINITIONS.

[For text of subd 1, see M.S.1990]

Subd. 2. **Confirmatory test; confirmatory retest.** "Confirmatory test" and "confirmatory retest" mean a drug or alcohol test that uses a method of analysis allowed under one of the programs listed in section 181.953, subdivision 1.

Subd. 3. [Repealed, 1991 c 60 s 12]

[For text of subd 4, see M.S.1990]

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 according to the standards established under one of the programs listed in section 181.953, subdivision 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

[For text of subs 6 and 7, see M.S.1990]

Subd. 8. **Initial screening test.** "Initial screening test" means a drug or alcohol test which uses a method of analysis under one of the programs listed in section 181.953, subdivision 1.

[For text of subd 9, see M.S.1990]

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 contained in the standards of one of the programs listed in section 181.953, subdivision 1.

[For text of subs 11 to 13, see M.S.1990]

History: 1991 c 60 s 1-4

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 which participates in one of the programs listed in section 181.953, subdivision 1.

(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.

[For text of subs 2 to 7, see M.S.1990]

History: 1991 c 60 s 5

181.953 RELIABILITY AND FAIRNESS SAFEGUARDS.

Subdivision 1. **Use of licensed, accredited, or certified 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 that meets one of the following criteria for drug testing:

(1) is certified by the National Institute on Drug Abuse as meeting the mandatory guidelines published at 54 Federal Register 11970 to 11989, April 11, 1988;

(2) is accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, under the forensic urine drug testing laboratory program; or

(3) is licensed to test for drugs by the state of New York, department of health, under Public Health Law, article 5, title V, and rules adopted under that law.

(b) For alcohol testing, the laboratory must either be:

(1) licensed to test for drugs and alcohol by the state of New York, department of health, under Public Health Law, article 5, title V, and the rules adopted under that law; or

(2) accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, in the laboratory accreditation program.

Subd. 2. [Repealed, 1991 c 60 s 12]

Subd. 3. Laboratory testing, reporting, and sample retention requirements. A testing laboratory that is not certified by the National Institute on Drug Abuse according to subdivision 1 shall follow the chain-of-custody procedures prescribed for employers in subdivision 5. 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 test report must indicate the drugs, alcohol, or drug or alcohol metabolites tested for and whether the test produced negative or positive test results. A laboratory shall retain and properly store for at least six months all samples that produced a positive test result.

[For text of subd 4, see M.S.1990]

Subd. 5. Employer chain-of-custody procedures. 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. The procedures must require the following:

(1) possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;

(2) the sample must always be in the possession of, must always be in view of, or must be placed in a secured area by a person authorized to handle the sample;

(3) a sample must be accompanied by a written chain-of-custody record; and

(4) individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

[For text of subds 6 to 8, see M.S.1990]

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 labo-

ratory licensed under subdivision 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that the chain-of-custody procedures in subdivision 3 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.

[For text of subs 10 and 11, see M.S.1990]

History: 1991 c 60 s 6-9

NOTE: Subdivision 1, as amended by Laws 1991, chapter 60, section 6, is effective May 7, 1991, except the changes to this subdivision do not apply to a laboratory with a current license from the commissioner until July 1, 1992. See Laws 1991, chapter 60, section 13.