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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1963**

March 23, 2009

Authored by Winkler and Ward

The bill was read for the first time and referred to the Higher Education and Workforce Development Finance and Policy Division

1.1 A bill for an act
1.2 relating to employment; providing new requirements for employers in the early
1.3 warning system; applying new penalties for any employer failing to comply with
1.4 the Worker Adjustment and Retraining Notification Act, United States Code,
1.5 title 29, section 2101; enhancing oversight authority to the commissioner of
1.6 employment and economic development; amending Minnesota Statutes 2008,
1.7 sections 116J.035, by adding subdivisions; 116L.976, subdivision 1, by adding a
1.8 subdivision; repealing Minnesota Statutes 2008, section 181.74, subdivision 1.

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

1.10 Section 1. Minnesota Statutes 2008, section 116J.035, is amended by adding a
1.11 subdivision to read:

1.12 Subd. 7. **Compliance orders.** The commissioner may issue an order requiring an
1.13 employer to comply with section 116L.976. The department shall serve the order upon
1.14 the employer or the employer's authorized representative in person or by certified mail
1.15 at the employer's place of business. An employer who wishes to contest the order must
1.16 file written notice of objection to the order with the commissioner within 15 calendar
1.17 days after being served with the order. A contested case proceeding must then be held
1.18 in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being
1.19 served with the order, the employer fails to file a written notice of objection with the
1.20 commissioner, the order becomes a final order of the commissioner.

1.21 Sec. 2. Minnesota Statutes 2008, section 116J.035, is amended by adding a subdivision
1.22 to read:

1.23 Subd. 8. **Civil actions.** The commissioner may bring an action in the district court
1.24 where an employer resides or where the commissioner maintains an office to enforce or
1.25 require compliance with orders issued under subdivision 7.

2.1 Sec. 3. Minnesota Statutes 2008, section 116J.035, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 9. **Employer liability.** If an employer is found by the commissioner to
2.4 have violated a section identified in subdivision 7, or any rule adopted under section
2.5 116L.976, and the commissioner issues an order to comply, the commissioner shall order
2.6 the employer to cease and desist from engaging in the violative practice and to take such
2.7 affirmative steps that in the judgment of the commissioner will effectuate the purposes
2.8 of the section or rule violated. The commissioner shall order the employer to pay to
2.9 the aggrieved parties back pay, gratuities, and compensatory treble damages, less any
2.10 amount actually paid to the employee by the employer, and an additional equal amount as
2.11 liquidated damages. Any employer who is found by the commissioner to have repeatedly
2.12 or willfully violated section 116L.976 shall be subject to a civil penalty of \$1,000 for each
2.13 violation for each employee. In determining the amount of a civil penalty under this
2.14 subdivision, the appropriateness of the penalty to the size of the employer's business and
2.15 the gravity of the violation shall be considered. In addition, the commissioner may order
2.16 the employer to reimburse the department and the attorney general for all appropriate
2.17 litigation and hearing costs expended in preparation for and in conducting the contested
2.18 case proceeding, unless payment of costs would impose extreme financial hardship
2.19 on the employer. If the employer is able to establish extreme financial hardship, the
2.20 commissioner may order the employer to pay a percentage of the total costs that will not
2.21 cause extreme financial hardship. Costs include but are not limited to the following:

2.22 (1) costs of services rendered by the attorney general, including reasonable attorney
2.23 fees;

2.24 (2) costs of services of private attorneys if engaged by the department and reasonable
2.25 attorney fees;

2.26 (3) costs of services of administrative law judges, court reporters, and expert
2.27 witnesses; and

2.28 (4) the cost of transcripts.

2.29 Interest shall accrue on and be added to the unpaid balance of a commissioner's order from
2.30 the date the order is signed by the commissioner until it is paid, at an annual rate provided
2.31 in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow
2.32 accounts for purposes of distributing damages.

2.33 Sec. 4. Minnesota Statutes 2008, section 116J.035, is amended by adding a subdivision
2.34 to read:

3.1 Subd. 10. **Court actions; suits brought by private parties.** An employee may
 3.2 bring a civil action seeking redress for a violation or violations of section 116L.976
 3.3 directly to district court. An employer who violates the requirements under section
 3.4 116L.976 is liable to the employee for the full amount of the wages, gratuities, and
 3.5 overtime compensation, and for an additional equal amount as liquidated damages. In
 3.6 addition, in an action under this subdivision the employee may seek treble damages and
 3.7 other appropriate relief provided by subdivision 9 and otherwise provided by law.

3.8 Sec. 5. Minnesota Statutes 2008, section 116J.035, is amended by adding a subdivision
 3.9 to read:

3.10 Subd. 11. **District court jurisdiction.** Any action brought under subdivision 10
 3.11 may be filed in the district court of the county where a violation of section 116L.976 is
 3.12 alleged to have been committed, where the respondent resides or has a principal place
 3.13 of business, or any other court of competent jurisdiction. The action may be brought by
 3.14 one or more employees.

3.15 Sec. 6. Minnesota Statutes 2008, section 116J.035, is amended by adding a subdivision
 3.16 to read:

3.17 Subd. 12. **Attorney fees and costs.** In any action brought pursuant to subdivision
 3.18 10, the court shall order an employer who is found to have committed a violation of
 3.19 section 116L.976 to pay to the employee's costs, disbursements, witness fees, and
 3.20 reasonable attorney fees.

3.21 Sec. 7. Minnesota Statutes 2008, section 116L.976, subdivision 1, is amended to read:

3.22 Subdivision 1. **Notice.** (a) ~~The commissioner shall encourage those business~~
 3.23 ~~establishments~~ An employer considering a decision to effect a plant closing, substantial
 3.24 layoff, or relocation of operations located in this state ~~to~~ shall give 60 days' notice of
 3.25 that decision ~~as early as possible~~ to the commissioner, the employees of the affected
 3.26 establishment, any employee organization representing the employees, and the local
 3.27 government unit in which the affected establishment is located. This notice shall be in
 3.28 addition to any notice required under the Worker Adjustment and Retraining Notification
 3.29 Act, United States Code, title 29, section 2101. All exemptions provided by United States
 3.30 Code, title 29, sections 2101 through 2109, under the Worker Adjustment and Retraining
 3.31 Notification Act shall be recognized and enforced under this provision.

3.32 (b) For purposes of this section, "plant closing" means the announced or actual
 3.33 permanent or temporary shutdown of a single site of employment, or one or more facilities

4.1 or operating units within a single site of employment, if the shutdown results in an
4.2 employment loss at the single site of employment during any 30-day period for 50 or more
4.3 employees excluding employees who work less than 20 hours per week.

4.4 (c) For purposes of this section, "employer" has the meaning given under United
4.5 States Code, title 29, section 2101.

4.6 Sec. 8. Minnesota Statutes 2008, section 116L.976, is amended by adding a subdivision
4.7 to read:

4.8 Subd. 3. **Penalties for noncompliance.** In addition to other fines and penalties
4.9 provided by law, an aggrieved person may bring a civil action against an employer who:

4.10 (1) violates the provisions of this section;

4.11 (2) violates federal requirements under the Worker Adjustment and Retraining
4.12 Notification Act, United States Code, title 29, sections 2101 through 2109; and

4.13 (3) intentionally denies payment of back pay and benefits for the period of violation,
4.14 up to 60 days as required under the Worker Adjustment Retraining Notification Act.

4.15 A plaintiff prevailing in an action under this subdivision is entitled to treble damages,
4.16 along with an award of costs, disbursements, and reasonable attorney fees.

4.17 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes
4.18 committed and causes of action arising on or after that date.

4.19 Sec. 9. **CITATION.**

4.20 Sections 1 to 8 shall be referred to as the "Bob Swenson Employee Protection Act
4.21 of 2009."

4.22 Sec. 10. **REPEALER.**

4.23 Minnesota Statutes 2008, section 181.74, subdivision 1, is repealed.

4.24 Sec. 11. **EFFECTIVE DATE.**

4.25 Sections 1, 7, 9, and 10 are effective the day following final enactment.

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

Subdivision 1. **Gross misdemeanor.** 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 30 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.