Act Summary

MN HOUSE RESEARCH

Chapter 110

2024 Regular Session

Subject Labor and Industry Policy

Bill S.F. 3852

Analyst Marta James
Justin Cope

Date June 7, 2024

Overview

Contains various labor policy and technical provisions under the purview of the Department of Labor and Industry (DLI) or the Bureau of Mediation Services (BMS). Signed into law on May 17, 2024. Many provisions take effect, by law, on August 1, 2024, and others on the dates specified. Provisions include:

- Article 1 - DLI construction codes and licensing policy and technical provisions;
- Article 2 - Labor standards policy and technical provisions;
- Article 3 - DLI occupational safety and health (OSHA) policy and technical provisions;
- Article 4 - Apprenticeship policy and technical provisions;
- Article 5 - BMS technical provisions;
- Article 6 – DLI minimum wage modifications; and
- Article 7 - Miscellaneous labor policy provisions, including credit charges for tips, salary ranges in job postings, captive audience posters, oral fluid employment testing, and surgical smoke evacuation system policy.

Article 1: Construction Codes and Licensing

DLI construction codes and licensing policy and technical provisions.

Section	Description - Article 1: Construction Codes and Licensing
1	**[§ 326.02, subd. 5] Limitation.** Exempts the planning and supervision of the construction and installation of a well by a licensed well contractor from licensing requirements applying to the practices of architecture, professional engineering, land surveying, landscape architecture, professional geoscience, and interior design.

Section	Description - Article 1: Construction Codes and Licensing

Effective May 18, 2024.

2 **[§ 326B.0981, subd. 3] Content.**

Corrects a cross-reference to the subdivision detailing the contents of Internet education courses.

3 **[§ 326B.0981, subd. 4] Internet continuing education.**

Requires Internet continuing education courses for elevator constructors to be approved by the commissioner of labor and industry, rather than allowing approval by the International Distance Education Certification Center or the International Association for Continuing Education and Training.

4 **[§ 326B.0981, subd. 8] Facilities.**

Corrects a cross-reference to the subdivision detailing the contents of Internet education courses.

5 **[§ 326B.33, subd. 7] Power limited technician.**

Removing obsolete provisions for companies holding alarm and communication licenses as of 2003 and for persons who had submitted applications to take limited technician examinations by 2007.

6 **[§ 326B.33, subd. 21] Exemptions from licensing.**

Expands references to specific provisions of the National Electrical Code to include the entire National Electrical Code. Limits the locations where an owner may perform electrical work without a license to property for owner occupancy that has a separate electrical utility service not shared with other residential dwellings.

7 **[§ 326B.36, subd. 2] Technology systems.**

Expands references to specific provisions of the National Electrical Code to include the entire National Electrical Code. Exempts circuitry and equipment for indoor lighting systems from technology systems inspections. Amends the authority of an electrical inspector who witnesses noncompliance with electrical standards to include requiring the filing of an electrical permit, rather than the filing of a request for electrical inspection.

8 **[§ 326B.36, subd. 7] Exemptions from inspections.**

Expands references to specific provisions of the National Electrical Code to include the entire National Electrical Code.

Section	Description - Article 1: Construction Codes and Licensing
9	**[§ 326B.46, subd. 6] Well contractor exempt from licensing and bond; conditions.** Expands exemptions from plumbing licensing requirements for licensed well contractors to add designing, in addition to installing, water service lines. Effective May 18, 2024.

Article 2: Labor Standards

Labor standards policy and technical provisions.

Section	Description - Article 2: Labor Standards
1	**[§ 13.79, subd. 1] Identity of complainants.** Expands data provision classifying complainant identity data for violations of additional labor chapters as private data. Clarifies that the DLI commissioner may disclose this data to other government entities with written consent of complainant.
2	**[§ 177.27, subd. 2] Submission of records; penalty.** Allows the DLI commissioner to set the time and manner of submission for employers submitting required labor records.
3	**[§ 177.27, subd. 4] Compliance orders.** Adds sections 181.10 (wages paid every 15 days) and 181.64 (false statements as inducement to entering employment) to list of labor provisions that the DLI commissioner can enforce through its compliance order authority.
4	**[§ 177.27, subd. 7] Employer liability.** Allows the DLI commissioner to order reinstatement of an employee as part of the relief granted through its compliance order authority for labor violations.
5	**[§ 177.30] Keeping records; penalty.** Requires employers to keep records of the earning statements required for each pay period under section 181.032, paragraphs (a) and (b), for three years.
6	**[§ 177.42, subd. 2] Project.** Modifies the definition of “project” to apply prevailing wage requirements to additional wholly or partially state-funded projects, including a project altering, improving, or restoring a structure, land, or public work that benefits the public or is intended for public use.

Section	Description - Article 2: Labor Standards
7	**[§ 181.212, subd. 7] Voting.** Modifies voting provision of the Minnesota Nursing Home Workforce Standards Board to require that at least two of the five affirmative votes required for the board to take action must be cast by a commissioner member or appointee, and at least one affirmative vote must be cast by a member representing nursing home employers or employer organizations.
8	**[§ 181.213, subd. 1] Authority to establish minimum nursing home standards.** Moves due date for establishing initial wage standards for nursing home workers from August 1, 2024, to November 1, 2024.
9	**[§ 181.939, subd. 2] Pregnancy accommodations.** Requires an employer to maintain health insurance coverage for an employee and their dependents during any required period of leave for pregnancy under section 181.939, subdivision 2, provided that the employee pays the employee share of costs.
10	**[§ 181.941, subd. 4] Continued insurance.** Expands the insurance requirement under the pregnancy and parenting leave under section 181.941 to require an employer to maintain health insurance coverage for an employee and their dependents during any required period of leave under this section, provided that the employee pays the employee share of costs.
11	**[§ 181.943] Relationship to other leave.** Provides that parenting and pregnancy leave under section 181.941 cannot be reduced by any period of paid or unpaid leave needed for prenatal medical appointments.
12	**[§ 181.9881] Restrictive employment covenants; void in service contracts.** Prevents a company or partnership that provides services to a customer from restricting the customer from directly or indirectly soliciting or hiring one of their employees. The contract a service provider signs with a customer cannot restrict or prohibit the customer from hiring the employees either. When an existing contract has a restriction in it that is prohibited by this bill, the service provider must provide notice to their employees of the law and the existing contract provision that violates the law. Does not apply to certain professional business consulting and computer software development workers who seek employment with a company or partnership with the intention of being considered for a permanent position with the customer later.

Section	Description - Article 2: Labor Standards
	Effective on July 1, 2024, and applies to contracts and agreements entered into on or after that date.
13	**[§ 181A.08] Powers and duties of the department.** Clarifies that a compliance order issued for a violation of a child labor provision under chapter 181A becomes final if no written objection is filed within 15 days. Expands the relief the DLI commissioner can order against an employer through its compliance order authority for child labor violations.
14	**[§ 181A.12, subd. 1] Fines; penalty.** Clarifies that fines issued by DLI for a child labor violation may be "up to" the amount specified and the DLI commissioner need only consider the size of the business, gravity of the violation, and history of past violations in determining the fine amount. The general factors for state agencies under chapter 14 do not apply.
15	**[§ 181A.12, subd. 4] Liquidated damages.** Adds a liquidated damages provision for violations of the child labor provision prohibiting minors under age 18 from working in particularly hazardous occupations.
16	**[§ 181A.12, subd. 5] Retaliation.** Prohibits retaliation by an employer against an employee for asserting their rights or filing a complaint under the child labor provisions in chapter 181A or related rules.

Article 3: Occupational Safety and Health

DLI Minnesota OSHA (MNOSHA) policy and technical provisions.

Section	Description - Article 3: Occupational Safety and Health
1	**[§ 182.6526, subd. 1] Definitions.** Makes technical changes to definitions in the Warehouse Distribution Worker Safety Act to use existing definitions for "employee" and "employer" under MNOSHA, section 182.651, subdivisions 7 and 9. Clarifies meaning of "nonexempt" employee by cross-reference.
2	**[§ 182.664, subd. 3] Powers and duties of board.** Exempts deliberative hearings and meetings of the occupational safety and health review board (the "board") from Open Meeting Law requirements under chapter 13D, including notice and recording requirements, when the board is deliberating its decision on petitions or appeals.

Section	Description - Article 3: Occupational Safety and Health
3	**[§ 182.664, subd. 5] Authority of board; scope of review.** Adds clarifying language to specify the scope of the board's authority to review administrative law judge orders and decisions and petitions to vacate a final order of the commissioner. Adds mistake of law by the commissioner as a good cause basis to vacate a commissioner's final order.
4	**[§ 182.665] Judicial review.** Adds consistent language clarifying that appeals to the Minnesota Court of Appeals of the board's final orders, including petitions to vacate final orders of the commissioner, are covered by the Minnesota Administrative Procedure Act.
5	**[§ 182.666, subd. 6] Authority to assess fines; considerations.** Adds technical cross-reference to clarify that the more specific standards under this section apply to penalties for MNOSHA citations.
6	**[§ 182.667, subd. 4] Investigative data.** Allows civil investigative data to be shared with city and county attorneys, consistent with section 13.39, which allows investigative data to be shared to "aid the law enforcement process."
7	**[§ 182.677, subd. 1] Definitions.** Makes clarifying technical change to the definition of "warehouse distribution center" and "meatpacking site" in the warehouse ergonomics section.
8	**[§ 182.677, subd. 2] Ergonomics program required.** Makes technical change to the warehouse ergonomics section.

Article 4: Apprenticeship Policy

Policy and technical changes to apprenticeship program to update language and expand registered apprenticeship.

- Sections 1 and 17 modify data sharing of apprentice data on individuals that DLI maintains, collects, or receives and makes apprentice data private data on individuals.
- Sections 2, 8, 16, and 24 make consistent changes to protected class language throughout the apprentice training chapter.
- Section 3 modifies the definition of "journeyworker," and sections 4, 5, and 14 make technical updates to remove obsolete language or dates.

- Section 6 allows apprenticeship program modifications to comply with federal apprenticeship standards.
- Section 7 increases time to submit an executed apprenticeship agreement from 30 to 45 days for apprentices registered with a newly approved program.
- Sections 9 and 10 make technical and clarifying language changes.
- Section 11 modifies ratio requirements for apprentices to journeyworkers to one-to-one, except for building and construction trades or hazardous occupations, which have additional requirements.
- Section 12 adds approval by the Apprenticeship Division for an apprenticeship program's graduated schedule of wages.
- Section 13 provides that a probationary period cannot exceed one year or 25 percent of the program, whichever is shorter, consistent with federal requirements.
- Sections 15 and 19 to 23 modify language to align more closely with federal requirements and timelines for program deregistration. Section 15 requires apprenticeship agreements to be prepared by the sponsor on a form provided by DLI.
- Section 18 increases time to file an appeal for an apprenticeship agreement violation from ten to 15 days.
- Section 25 repeals a rule and section of statute related to training cycles.

Article 5: Bureau of Mediation Services

BMS technical provisions.

Section	Description - Article 5: Bureau of Mediation Services
1 – 31	**BMS technical changes.** Sections 1 to 31 make various technical changes to BMS provisions in chapters 179 (labor relations) and 179A (public employment labor relations) to modernize language and provide additional clarity and organization.
32	**[§ 626.892, subd. 12] Interaction with other laws.** Deletes the applicability of Minnesota Rules, chapter 7315, independent review, to peace officer grievance arbitration procedure. Part of BMS technical updates.
33	**Revisor instruction.** Makes technical update to subdivision numbering in section 179.35. Part of BMS technical updates.

Section	Description - Article 5: Bureau of Mediation Services
34	**[Minn. Rules, part 5510.0310, subpart 13] Repealer.** Repeals the definition of "hearing officer or mediator" from the Minnesota Rules applying to PELRA. Part of BMS technical updates.

Article 6: Minimum Wage

DLI minimum wage modifications.

Section	Description - Article 6: Minimum Wage
1	**[§ 177.23, subd. 12] Large employer.** Adds existing definition of "large employer" to the definitions under the Minnesota Fair Labor Standards Act. Relatedly, this definition is removed from the minimum wage section, section 177.24. Effective January 1, 2025.
2	**[§ 177.23, subd. 13] Small employer.** Adds existing definition of "small employer" to the definitions under the Minnesota Fair Labor Standards Act. Relatedly, this definition is removed from the minimum wage section, section 177.24, and the technical cross reference updated consistently in the revisor instruction section. Effective January 1, 2025.
3	**[§ 177.24, subd. 1] Amount. (minimum wage rate)** Modifies several minimum wage provisions to remove most minimum wage distinctions and lower rates allowed in the current law. Removes the minimum wage distinctions and lower rates: ▪ between large and small employers. Relatedly, moves the existing definitions of "large employer" and "small employer" to a separate definitions section in section 177.23, subdivisions 12 and 13; ▪ for summer work travel exchange J-1B nonimmigrant visa holders working for hotels, motels, or resorts, if they provide a food and lodging benefit; and ▪ for youth under age 18 working for a large employer.

Section	Description - Article 6: Minimum Wage

Paragraph (b) retains existing youth training wage allowing employers to pay a lower training rate for the first 90 days of consecutive employment for an employee under age 20. The training rate is also adjusted annually.

Paragraph (c) retains existing provision requiring the DLI commissioner to annually calculate the percentage increase to minimum wage and issue an order adjusting the minimum wage rates by September 30 each year. Allows the DLI commissioner to adjust the minimum wage rates by the lesser of the inflation-based percentage or 5 percent. This is an increase from 2.5 percent in the existing law and becomes effective August 1, 2024. Makes consistent technical updates to cross references. Removes provision that previously gave DLI discretion to not implement the minimum wage increase or to make an additional supplemental increase.

As result of these changes, the large employer minimum wage rate, currently set at $10.85, under new paragraph (a), as adjusted by DLI annually, will become the minimum wage rate applicable to most employers starting January 1, 2025, unless the training wage rate for employees under age 20 or another specific statutory rate applies, for example for trainee election judges under section 204B.19, subdivision 6. If a city has a separate minimum wage rate requirement, the higher of the two rates will apply for that city.

Effective January 1, 2025, except paragraph (c) changes take effect August 1, 2024.

4 **[§ 204B.19, subd. 6] Trainee election judges.**

Makes consistent change to the lower rate for trainee election judges to clarify they can continue to be paid two-thirds of the minimum wage rate, without distinction for a large employer.

Effective January 1, 2025.

5 **Revisor instruction.**

Makes consistent technical cross reference updates to existing statutes based on changes made to sections 177.23 and 177.24 in this article.

Effective January 1, 2025.

Article 7: Miscellaneous Labor Policy

Miscellaneous labor policy provisions, including credit charges for gratuities, salary ranges in job postings, captive audience posters, oral fluid employment testing, and surgical smoke evacuation system policy.

Section	Description - Article 7: Miscellaneous Labor Policy
1	**[§ 177.24, subd. 3a] Gratuities; credit cards or charges.** Requires tips received by an employee via debit or credit card to be credited to the employee in the pay period received and paid to the employee no later than the next scheduled pay period. Effective August 1, 2024.
2	**[§ 181.173] Salary ranges required in job postings.** Requires an employer with 30 or more employees to include the starting salary range and general description of benefits or other compensation for an available position on any job posting, whether the posting is printed or electronic. “Salary range” is defined as the minimum or maximum salary or hourly range of compensation for a job at the time of posting. Effective January 1, 2025.
3	**[§ 181.531, subd. 3] Notice (captive audience posters).** Requires the DLI to develop an employee rights poster that educates and notifies employees about their rights under section 181.531, the employer-sponsored meetings or communications (captive audience) law. The poster must be made available in the five most commonly spoken languages in Minnesota and must be posted by employers to meet the notice requirements of section 181.531. A nonpartisan summary of the law can be found in article 11, section 25, page 31, here. Effective October 1, 2024.
4	**[§ 181.950, subd. 9a] Oral fluid test.** Adds a definition of “oral fluid test” to the Drug and Alcohol Testing in the Workplace statute. An “oral fluid test” is a test that uses a saliva sample to measure the presence of drugs, alcohol, cannabis, or their metabolites at the same or better levels as the existing lab programs under section 181.953, subdivision 1.
5	**[§ 181.951, subd. 1] Limitations on testing.** Expands current limitations on drug and alcohol testing to add an oral fluid test as another valid means for an employer to test a job applicant or employee for drugs or alcohol, pursuant to a written drug and alcohol testing policy, and as an alternative to the existing lab program testing currently required under the law.
6	**[§ 181.953, subd. 1] Use of licensed, accredited, or certified laboratory required.** Clarifies that use of a licensed, accredited, or certified lab is not required if an employer follows the procedures for an oral fluid test under subdivision 5a.

Section	Description - Article 7: Miscellaneous Labor Policy

7 **[§ 181.953, subd. 3] Laboratory testing, reporting, and sample retention requirements.**

Provides that laboratory testing, reporting, and sample retention requirements, and chain-of-custody requirements under section 181.953, subdivision 5, do not apply to oral fluid testing.

8 **[§ 181.953, subd. 5a] Oral fluid testing.**

Adds procedure for oral fluid testing as an alternative means for an employer to test a job applicant or employee for drugs, alcohol, cannabis, or their metabolites. Under this procedure, a job applicant or employee is required to submit to testing under the existing laboratory procedure within 48 hours of a positive, inconclusive, or invalid oral fluid test. Existing reliability and safeguard provisions on rights, notice, retest procedures, and job offer withdrawals also apply to oral fluid testing.

9 **[§ 182.678] Surgical smoke evacuation system policies.**

The use of lasers and electrosurgical units during surgical procedures creates a smoke. The smoke can contain viruses and toxic gases and vapors and can irritate the respiratory tract.

Requires health care employers in facilities performing surgeries, including hospitals, ambulatory surgical facilities, and outpatient surgical centers, to use a smoke evacuation system to capture and filter surgical smoke during surgeries likely to generate surgical smoke. Requires the commissioner of labor and industry to enforce the requirement.

Effective January 1, 2025.

10 **[Minn. Rules, part 5200.0080, subpart 7] Repealer.**

Repeals existing Minnesota Rule covering payment of tips by credit and debit cards, consistent with the new subdivision 3a added to section 177.24.

Effective August 1, 2024.

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