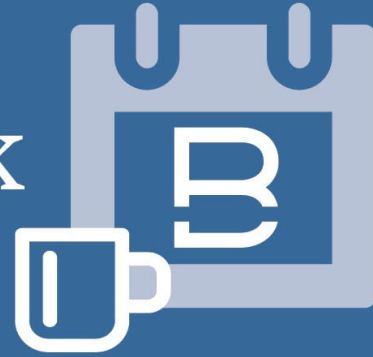


# The Work Week

Bassford Remele Employment Practice Group



April 15, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## More Changes! Minnesota House Passes 2024 Labor Bill

As if last year's whirlwind of employment legislation was not enough, the Minnesota Legislature is at it again. So far, we've covered proposed changes to last year's [ESST and Paid Family and Medical Leave laws](#), proposed changes to the [worker-classification laws in the construction industry](#), a bill requiring the inclusion of [salary ranges in job postings](#), and proposed legislation banning the [use of restrictive covenants in service contracts](#). This week's edition of *The Work Week* covers the broadest proposed employment-law legislation to date.

Last Thursday, the Minnesota Legislature passed a [companion labor bill](#) addressing numerous issues, including, but not limited to: (1) pay transparency; (2) a standard minimum wage; (3) shadow non-compete agreements; (4) child labor laws; (5) pay standards for publicly funded non-building projects; (6) OSHA reporting procedures; (7) smoke evacuation systems in hospitals; (8) flexibility on workplace drug tests; and (9) pregnancy leave. Phew, that is a lot! Let us break it down for you:

### 1. Pay Transparency

As highlighted in a recent edition of *The Work Week*, this proposed legislation requires employers to disclose the starting salary range and general description of all benefits and other compensation to be offered to "a hired job applicant" in each respective job posting. If an employer does not offer a salary range, they "must list a fixed pay rate." Now rolled into the labor bill, the proposed legislation further states that, a "salary range may not be open ended."

### 2. Standard Minimum Wage

Most importantly, the standard minimum wage provision of the bill modifies minimum wage provisions between large and small employers, so small employers must also pay their employees the standard minimum wage rate of \$10.85. Other notable provisions of the bill include requiring credit-card tips received by an employee to be credited to the employee in the pay period received and paid to the

employee no later than the next scheduled pay period. The bill also gives power to the Department of Labor and Industry (“DOL”) to enforce certain standards such as ensuring that wages are paid every fifteen days and that false statements are not being made as an inducement to entering employment. The bill further allows the DOL commissioner to set the time and manner for employers to submit required labor records. Finally, the new provisions also allow the commissioner to order reinstatement of an employee as part of the relief granted through its compliance order authority.

### **3. Shadow Non-Compete Agreements**

This section contains the additional restrictive-covenant prohibition covered last week. Employers who provide services to customers would be prohibited from preventing the customer from directly or indirectly soliciting or hiring one of the employer’s employees. The contract a service provider signs with a customer cannot restrict or prohibit the customer from hiring the employees either. If an existing contract already has a restriction in it prohibited by the section, the service provider is required to provide notice to their employees of the new law and the existing contract provision that violates the law, which will be effective July 1, 2024.

### **4. Child Labor Law Update**

The proposed provisions to the child labor law include the following:

- a. Clarifies that a compliance order will be issued for a violation of a child labor provision becomes final if no written objection is filed within 15 days and expands the relief the DOL commissioner can order against an employer through its compliance order authority for child labor violations.
- b. Explains that fines issued by the department of child labor violations may be “up to” the amount specified. In determining the fine amount, the commissioner is to analyze the size of the business, gravity of the violation, and history of past violations.
- c. Adds liquidated damages for violations of the child labor provision prohibiting minors under age 18 from working in hazardous occupations.
- d. Prohibits retaliation by employers when an employee asserts their rights or files a complaint under the child labor provisions in chapter 181A or related rules.

### **5. Pay Standards for Publicly Funded Non-Building Projects**

The definition of “project” is modified to apply current wage requirements to additional, wholly or partially state-funded projects, including a project altering, improving or restoring structure, land, or public work that benefits the public or is intended for public use.

### **6. Reporting Procedures for OSHA Violations**

Along with technical changes to MNOSHA, the bill exempts certain hearings and meetings of the OSHA board from Open Meeting Law requirements—such as when the board is deliberating its decision on petitions or appeals—which includes an exemption from providing notice and recording requirements for such proceedings.

Additionally, the bill provisions outline procedures for appealing the OSHA board’s final orders to the Minnesota Court of Appeals, clarifies the OSHA board’s authority to review administrative law judge orders and decisions and petitions to vacate a final order of the commissioner, and adds that a mistake of

law by the commissioner as a good cause basis to vacate a commissioner’s final order. It also allows OSHA to share investigative data with the city and county attorneys, allowing for investigative data to be shared to aid the law enforcement process.

**7. Smoke Evacuation Systems in Hospitals**

This provision requires health care employers who perform surgeries (such as hospitals, ambulatory surgical facilities, and outpatient centers) to use a smoke evacuation system to capture and filter surgical smoke.

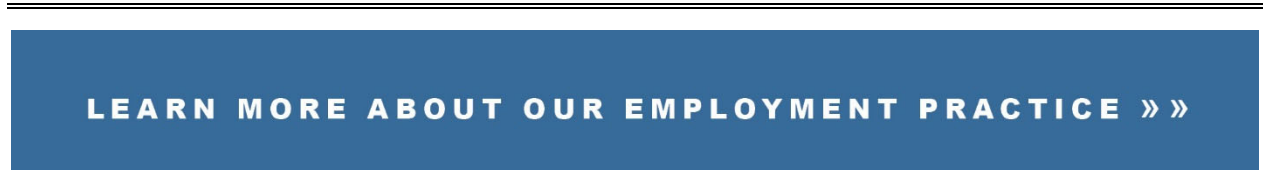
**8. Flexibility on Workplace Drug Tests**

This provision expands the limitations on drug and alcohol testing to add an oral fluid test as another valid means for an employer to test a job applicant for drugs and alcohol. An oral fluid test uses a saliva sample to measure the presence of drugs, alcohol, cannabis, or other metabolites at the same or better levels of the existing lab programs under DATWA. The provision explains that the use of a licensed, accredited, or certified lab is not required if an employer follows the procedures for an oral fluid test. Other requirements, such as chain-of-custody, do not apply to oral fluid testing. However, existing reliability and safeguard provisions still apply to oral fluid testing, such as notice, rights, retest procedures and job offer withdrawals.

**9. Pregnancy Leave**

This provision requires employers to maintain health insurance coverage for an employee and their dependents during any required period of leave for pregnancy, provided that the employee share costs. It also provides that parenting and pregnancy leave cannot be reduced by any period of paid or unpaid leave needed for prenatal medical appointments.

In yet another active legislative session for Minnesota employment law, the tides keep shifting by the day. Given the myriad of proposed changes, Bassford Remele will continue to keep you updated on potential laws that may impact your business. Should you have any questions regarding any of the proposed legislation, please reach out to our [employment practice](#) at Bassford Remele!



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